S. Hrg. 104–514

INDIAN TRUST FUNDS 1995

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

OVERSIGHT HEARING ON THE BIA MISMANAGEMENT OF FUNDS HELD IN TRUST FOR NATIVE AMERICANS

JUNE 11, 1996
WASHINGTON, DC

U.S. GOVERNMENT PRINTING OFFICE

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INDIAN TRUST FUNDS MANAGEMENT BY THE BUREAU OF INDIAN AFFAIRS AND IMPLEMENTATION OF THE INDIAN TRUST FUND MANAGEMENT ACT OF 1994

TUESDAY, JUNE 11, 1996

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 8:30 a.m. in room 485, Russell Senate Office Building, Hon. John McCain [chairman of the committee] presiding.

Present: Senators McCain, Campbell, Gorton, Simon, and Dorgan.

STATEMENT OF HON. JOHN McCAIN, U.S. SENATOR FROM ARIZONA, CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

Senator MCCAIN. Good morning.

I'd like to welcome the witnesses who have come here this morning, and I know that they all appreciate the fact that this is a rather busy day in the Senate, given the departure of Senator Dole from the Senate, which is one reason why we started this hearing earlier than usual.

I want to thank all the witnesses for coming here this morning to testify on what, for me, is an extremely troubling issue, the BIA's systematic mismanagement of funds it has held in trust for Native Americans for decades.

Before we get into the details, let me remind everyone of something none of us should forget. The $2.4 billion that cannot be reconciled is not Federal money, it is tribal money. The United States, as trustee, is supposed to receive, hold, or pay out these funds for the benefit of Indian tribes. It's not supposed to lose those funds.

I believe every failure of the Federal trustee to make and keep records and properly handle these funds is a theft from the Indian people, who are the beneficiaries of that trust, and I'm afraid that the BIA's approach has been terrible.

This time-weary way of handling Indian assets has got to stop.

The BIA's credibility is at an all-time low. Some people fear the BIA is dragging down with it the credibility of tribal governments. This is just one of several reasons why I continue to believe it's imperative that Congress enact S. 814, a bill which would authorize the Indian tribes, themselves, to reorganize the BIA according to tribal priorities.

If this administration and others would stop objecting to passage of that legislation, I would regain some hope that the days of BIA mismanagement are numbered.

Some have suggested that the Congress spend even more money to study the Indian trust fund's mismanagement problem. To them I would say that patience on Capitol Hill has grown very thin. It's time for decisive action.

BIA has spent nearly 5 years and about $21 million studying only part of the problem. It did not look at the several hundred million dollars it handles in individual Indian money accounts. It did not look at the several hundred billion it handles in investment transactions. And it did not find necessary records in other key areas.

On May 31, 1996, the Secretary sent the Congress what was merely an interim report rather than the full report required by the 1994 Reform Act. That report did not even include the statutorily-required balance reconciled as of September 30, 1995, for each tribal trust fund account.

I'm increasingly concerned by the administration's failure to comply with the 1994 act.

We've asked the witnesses in today's hearing to focus on three areas: what's gone wrong in the past and what is the extent of the damage; what kind of settlement process might resolve the legal damage claims of the Indian tribes to more than $2.4 billion; and what can the Interior Department do to ensure that the theft of Indian money stops.

On the first panel of witnesses will be Paul Homan, the special trustee appointed under the Indian Trust Funds Management Reform Act of 1994, to respond to these issues and give his first report to the Congress since his confirmation 9 months ago.

On the second panel we've asked Linda Calbom of the General Accounting Office to report on GAO's findings in this area, with a particular focus on the settlement process GAO has proposed.

Let me just add that we have found that the GAO's May 3 report it prepared for the committee to be quite useful.

On the third and final panel we have tribal leaders. We have invited testimony from Eric Davenport, chairman of the Inter-Tribal Monitoring Association of Indian trust funds, and Ivan Makil, president of the Salt River-Pima Maricopa Indian Tribe and a member of the Special Trustee's Advisory Board established under the 1994 act.

I'd like to mention that Senator Inouye is not feeling well this morning and may be in later on, but he, of course, was one of— in fact, the prime motivator behind trying to get this issue reconciled.

I'd like to welcome Paul Homan, who is the special trustee, Office of the Special Trustee for American Indians, Department of the Interior. He's accompanied by Ed Cohen, deputy solicitor, Department of the Interior; Jim Simon, deputy assistant attorney general, Department of Justice; and Joe Christie, who is the director of the reconciliation project of the Bureau of Indian Affairs.

Welcome, gentlemen. Good morning, Mr. Homan.

STATEMENT OF PAUL HOMAN, SPECIAL TRUSTEE, OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS, DEPARTMENT OF THE INTERIOR, WASHINGTON, DC, ACCOMPANIED BY ED COHEN, DEPUTY SOLICITOR; JIM SIMON, DEPUTY ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF JUSTICE; AND JOE CHRISTIE, DIRECTOR, RECONCILIATION PROJECT, BIA

Mr. HOMAN. Thank you, Mr. Chairman.

Mr. Christie and I will be doing the presentation, and the entire panel will be available, of course, for any questions you or the other Senators may have.

We are pleased to be here today. I am going to be very brief in my opening remarks, but I would ask that our full statement and the attachments be submitted for the full record.

The hearings, as you——

Senator MCCAIN. Before you proceed, Senator Campbell, did you have——

Senator CAMPBELL. That's okay. Go ahead, Mr. Chairman. I'll just, with your permission, introduce my statement in the record.

Just let me say that you've already covered the basics, I think. I don't know how you can carry out responsibilities if you lose the money. I'm certainly interested, as you are, in trying to find out what kind of accounting there is going to be to find out where that money went.

Thanks, anyway. I'll just submit it for the record.

Senator MCCAIN. Thank you, Senator Campbell.

Please proceed, Mr. Homan.

Mr. HOMAN. Thank you, Mr. Chairman.

As you indicated, the hearings are focusing on the reconciliation report of the Secretary of the Interior, what it may take to resolve claims arising from past trust management practices, an interim report by the special trustee, and what it may take to ensure sound trust management in the future.

I'd like to first address the Secretary's report, which was sent to the Congress on May 31.

Very briefly, it is a report on the reconciliation project, which was recently concluded in December and which covered a 20-year period, 1972 to 1992, on tribal trust accounts.

As the Secretary's report indicates, through April 30, 1996, 77 of the 280 tribes involved in the reconciliation project have responded. This is after we sent them the reports earlier in the year, had a national meeting in Albuquerque to present the overall findings of the report in February, and we are now in the process of conducting regional meetings and individual reports, customized to each tribe's use.

Specifically, to date two account-holders have accepted, five have disputed their account balances.

The balance of the account-holders have not specifically accepted or disputed their account balances, and many have requested additional time and/or a meeting. Because all of the scheduled meetings have not been held to receive and discuss account-holder issues and comments, and since many account-holders have not communicated their acceptance or dispute of their account balances, only an in-

terim report on the account-holders' attestations was provided in the Secretary's report dated May 31.

Further, until the regional meetings are completed and the tribes have had an opportunity to analyze the reports and documentation they have been provided, the Department will not know how many tribes will dispute the final balance in their accounts. At that time, however, the Department will be in a position to propose a mechanism to resolve any such disputes.

A final report on account-holder attestations and a mechanism to resolve any disputes will be submitted to the Congress by November 15, 1996.

Let me now turn to a brief discussion of my own interim report and my assessment of the trust management systems and conceptual strategic plan which my office has devised to deal with the longstanding problems affecting the Federal Government's trust management systems.

My assessment accompanies my statement and should be read in its entirety. Let me just brief you on the particulars.

Senator McCain. Without objection, your entire statement will be made a part of the record.

Mr. Homan. Thank you, Mr. Chairman.

The assessment concludes that the undeniably poor quality of the trust management systems and the condition of the historical records effectively prevent the Federal Government from providing an accurate and timely accounting to American Indian trust beneficiaries, as required by the Reform Act of 1994.

This can be demonstrated somewhat quantitatively and very detailed quantitative numbers are contained in my assessment. Let me highlight a few of them.

The reconciliation project, in January 1996, disclosed, as you noted, $2.4 billion, 32,000 transactions for which source documentation could not be located. The point here is that these records should not be missing and would not be missing had the Federal Government followed conventional trust accounting and record retention practices and controls.

Of particular concern to me and my office is about $694 million in unreconciled disbursements.

Another concern are amounts of reconciled disbursements which did not have complete disbursement packages.

A second major concern arising out of the reconciliation project confirmed what the GAO calls the "lack of a known universe of transactions and leases." This arises because the Government does not have a master lease program, nor does it have an accounts receivable program. Without both, one cannot determine the total amounts of leases the Government manages for the American Indians, nor can it determine what collections should be coming off those leases with any precision.

In addition, my assessment included an assessment of the IIM accounting system, which by all accounts is unreconcilable, and which is, by all accounts, in much worse shape than the tribal accounting system, which was the subject of the reconciliation report.

For example, there are over 50,000 accounts for individuals who have no address or incorrect addresses. There are over $45 million in those accounts.

There are over 15,000 accounts and over $21 million held for individuals who were formerly minors who should have had their money when they reached the age of majority.

There are over $43 million in overdraft interest clearing accounts which resulted from interest mispostings prior to 1993. These are, in effect, non-earning assets, which have the effect of depriving the current IIM account holders of over $2 million in annual income.

There are general ledger differences and losses estimated at about $26 million, which have the same effect on the earnings of the IIM pool.

Finally, there is a continued maintenance problem of over one-half of the accounts, 153,000 accounts with balances of less than $10 which cost the Government, in this case the American taxpayer, a good deal of money to maintain.

Mr. Chairman, in a simple word, these conditions are unacceptable by any reasonable standards and continue to do significant harm and damage to the American Indian beneficiaries.

They are caused by inherent defects in the core trust management systems that the Government uses to manage the Indian trust moneys, and these defective systems, in turn, prevent the Government from meeting the fiduciary standards, the accounting and reporting standards set forth in the American Indian Trust Management Reform Act of 1994 and standards of ordinary prudence applicable to all trustees, public or private.

The special trustee's conceptual strategic plan addresses these issues and identifies nine initiatives designed to rectify the problems and bring trust accounting and management systems up to commercial standards within 3 years.

What is needed first, in my view, is a complete overhaul of the four basic trust management systems. These include a new and improved trust resource asset management delivery system; an accounts receivable system, which I mentioned earlier was lacking, and billing system that uses lease contract and land and ownership information; a brand new trust depository payments and delivery system for IIM accounts similar to what was installed for the tribal accounts last year; and, finally, an improved land records and title recordation and certification system which is hopelessly behind and obsolete.

Along with the overhaul of these core systems must come improvements to the general ledger, record-keeping, archiving, risk management, the technology center, and an institutional structure to accommodate the overall change.

We have estimated that the implementation of the strategic plan will cost approximately $100 million over a 3-year period. While a considerable sum of money, it is still less than the $108 million to $281 million which an outside contractor estimated in 1992 it would cost just to reconcile the IIM accounting system.

In closing, let me just say that these strategic plan reforms are urgently needed and should be funded and implemented by the Government immediately, in my view, regardless of if and when the final comprehensive strategic plan called for in the Reform Act is completed and approved.

Each day the trust management systems remain status quo, the Federal Government's exposure to claims of mismanagement and

liability continues, and it's another day the Federal Government cannot meet fully its trust responsibilities to the American Indians.

Mr. Chairman, that concludes my section of the statement. I would like your permission to have Mr. Christie present very briefly some of the overall findings of the Arthur Andersen reconciliation report, and at that time we will be able to answer any questions you may have.

Senator McCAIN. Thank you, Mr. Homan.

Mr. Christie.

Mr. CHRISTIE. Thank you, Mr. Chairman.

This is a summary of findings of the tribal trust fund reconciliation. This is for the non-investment funds.

The total amount of the value is $17.7 billion. These values are expressed in absolute terms, and by "absolute terms" what I mean is that if you had a checking account and you deposited $1,000 and you turned around and wrote a check for $1,000, your account would be at zero, but in absolute terms we would say you had $2,000. We disregard the pluses and the minuses.

Out of the total of $17.7 billion, we reconciled $15.3 billion and we were unable to reconcile $2.4 billion.

The reconciliation results of the non-investment trust funds that were reconciled, we had an accuracy rate of 99.97 percent.

An analysis of the unreconciled transactions by value and type—this is the $2.4 billion that were unreconciled. They consist of receipts for $1,123,315,969, disbursements totaling $808,636,374, and transfers totaling $479,621,822.

Let me describe each of these.

The receipts are funds received and credited to a tribe's account. Transfers are funds transferred within one tribe's account. One tribe may have multiple accounts. And the disbursements are funds paid out from a tribe's account.

Now, the characteristics of unreconciled receipts—the total unreconciled receipts, as I said, was $1.1 billion. These funds were credited to the account. They were available by use by the tribe. They were earning interest.

What we cannot do is verify that the funds were credited to the correct account or to the correct tribe because we don't have the documents. This is not a case where the money is lost. The money is in the account, but we could not find the documents to substantiate that deposit.

The characteristics of unreconciled transfers—the total unreconciled transfers is $479 million. These are transfers within the same tribe's account. They are credited to the account, they are available for use by the tribe, they are earning interest. What we cannot do is verify the transfers to and from the correct accounts within that tribe's account.

Again, these funds are there and available for use; it's the documents that we can't find.

The characteristics of the unreconciled disbursements, the $808 million, these are deductions from a tribe's account, they go to an unidentified recipient, and we cannot verify proper purpose or account that it was taken from.

A further analysis of the unreconciled disbursements—out of the $808 million, $73.5 million were what we call "positive disburse-

ments." These were canceled checks that came back and were re-credited to the tribe's account from which it came out of.

That brings us down to $735,058,731. This is the net of the positive disbursements.

From that, we would look at deducting the attorney fee awards. These are awards that were paid to tribes, and the first deduction from that award is the attorney fees and the expert witnesses. The unreconciled attorney fees were $38 million, and the expert witnesses were $1.4 million, which gives us a net unreconciled tribal disbursements of about $694 million, which turns out to be our true net disbursements that we cannot account for that are tribal money.

Thank you, sir.

Senator McCAIN. Thank you, Mr. Christie.

[Prepared statements of Mr. Homan and Mr. Christie appear in appendix.]

Senator McCAIN. Mr. Homan, I remember your confirmation hearing before this committee. Could you briefly review with us your credentials to address this issue?

Mr. HOMAN. I'd be glad to, Mr. Chairman.

I spent the early part of my career as a bank regulator with the Office of the Controller of the Currency. I spent some 18 years with them. Between 1978 and 1982 I was the senior bank regulator for the office and in charge of the supervision of the 4,700 major national banks in the country.

Since then, I have been engaged off and on as the restructuring person sent in five major bank corporations, all of which were successfully restructured and ultimately sold, except for my last one, which is a local institution here in town. I left that assignment just prior to this assignment.

So I have about 30 years of experience in troubled banking situations and in restructuring and regulating banks.

Senator McCAIN. In those 30 years, have you ever seen anything like this?

Mr. HOMAN. I have to say honestly, Mr. Chairman, that I have not, in an operational sense. What I feel is the primary cause here is a neglect of basic operating systems over a 20- to 30-year period, to the point where the Indian trust management systems, the record-keeping and controls are absolutely obsolete.

During that same period, during many years these programs were under-funded, and I believe that is the principal cause of why the Department has not been able to keep pace with the very rapid changes in technology taking place in trust management and also in the improvement of best practices or prudential practices in the trust industry.

Senator McCAIN. Do you have confidence that this problem can be resolved and remain under the authority and responsibility of the BIA?

Mr. HOMAN. Mr. Chairman, I believe that what is required here is the overhaul of the basic systems at the BIA. I believe that people there, while well-intentioned—and certainly I or any associates of mine could not run their systems any better than they are running them—are not capable of reforming themselves to the extent they need it.

What is needed here are some basic commercial systems which are readily available in any bank or trust company in the United States, with the exception of the land record and ownership system. I believe these should be purchased from the outside. There is no reason why the Bureau or the tribes, themselves, couldn't operate those systems once those reforms take place.

Senator McCAIN. Do you have confidence that the BIA can do that?

Mr. HOMAN. As I indicated, I have no confidence that the current management there is capable of carrying out this reform effort; however, with a new system I believe they could be trained and could implement it, along with the self-governance tribes.

What my plan is designed to do is to set forth, as the law requires, a common set of policies and procedures, a common set of laws, and a common set of accounting practices which can be administered by the Bureau, by the tribes, themselves, or by any third party, much like private trust companies are operated.

Senator McCAIN. The Secretary sent a report on May 31, as you know, but that report failed to include a proposed balance reconciled as of September 30, 1995, for the trust account of each tribe, as required by the law. Can you explain why he didn't do that?

Mr. HOMAN. The report or the law, rather, requires the Secretary to report on disputed balances and attestations by particular tribes as to their balances, as set forth in the reports which we sent to each tribe in early January.

There are over 280 tribes. As you—if you have looked at the report, and I'm sure you have, these are very complex reports. They are this thick. The tribes simply have had difficultly understanding them.

We did meet with them in February to give them an overview of the methodologies used and the overall summary results. We have been working with each tribe in regional meetings since then, three of which have taken place and two of which we have planned for June and July.

And then, after that, they will be in a better position to make a decision as to whether they wish to dispute the balance or not.

As I said in our opening remarks and as the Secretary's report indicates, through April 30, only some 77 tribes have responded, but only two have actually accepted the balances, and five have disputed them, so we're not in a position at this time to know what the final resolution of that is going to be, whether there are going to be a large number of tribes disputing or accepting.

At the end of the summer we will be in a better position to make that assessment, and we will be providing a final reconciliation report on November 15.

Senator McCAIN. In GAO's written testimony they indicate that problems continue, despite the fact that in February of this year the Secretary delegated to you line authority over the BIA's Office of Trust Fund Management and overall financial trust functions within the BIA area and agency offices.

In these efforts, have you had the full cooperation of the Assistant Secretary of Indian Affairs and the BIA leadership at each level?

Mr. HOMAN. Yes; I think generally they have been very cooperative. The Bureau is under very severe budget constraints. The problems that are emphasized in this report are problems of long-standing. The Office of Trust Fund Management, which now reports to me, is spending every single dollar we can save to try to clean up the IIM accounts, but essentially we don't have enough money to do it. Until these reforms are funded, we won't be able to make meaningful inroads in clearing up these exceptions.

But as far as overall cooperation with the Bureau, I have had no complaints to date.

Senator MCCAIN. In the private sector, wouldn't a trustee be held financially liable if it failed to produce backup documentation to reconcile $2.4 billion, which is a full 14 percent of the transactions it handled in a trust account?

Mr. HOMAN. I don't want to beg the question, but I'd like to ask our deputy solicitor to answer that question, Mr. Chairman.

Mr. SIMON. Senator, if I may, my name is Jim Simon from the Department of Justice.

Senator I believe that if a private trustee failed to fulfill the duty to properly account for records, and if that failure to properly account led to a loss, then I think the private trustee would be responsible for the loss.

Senator MCCAIN. Thank you. It just seems difficult for most of us to understand how this could be going on for 20 to 30 years, as you pointed out, Mr. Homan.

Maybe it's a commentary as to the lack of concern that we, as a Congress and as a Government, have about Native Americans. I would suggest if this problem existed with any other group of Americans, it would not have been allowed to go for as long a period as it has.

I appreciate very much your efforts, Mr. Homan. I know I speak for the entire committee when I tell you we want to support you in every way. We're very impatient, obviously, but not nearly as impatient as the Native Americans are who are directly affected by this, both individually and tribally.

We'd like to see this issue brought to closure one way or the other. Senator Inouye was the prime sponsor of the 1994 act which has brought this situation into being, but I know he shares my frustration with the fact that we haven't been able to make more progress. I also understand the problems you're facing.

I thank you for your efforts, and we want to maintain close contact with you as we proceed.

I hope we don't have to act further legislatively, since the Department of the Interior is not in compliance with the laws that already exist, but I don't know how to express the frustration that we feel without perhaps acting to ensure at least that funds are available.

Senator Campbell.

Senator CAMPBELL. Thanks, Mr. Chairman.

About 2 months ago I lost my checkbook and my wife got really upset, and I tried to console her by telling her I didn't lose the money, I just lost the checkbook. I think that's what I'm hearing here.

The only question I have to ask really is on the 99.4 percent accuracy rate. How does that compare with other agencies?

Mr. HOMAN. I think the 99.4 percent accuracy rate you're talking about refers to only the reconciled items. I think it's more correct to say that there is an 86 percent accuracy rate.

Senator CAMPBELL. How does that compare with other agencies?

Mr. HOMAN. I have no basis for comparison. The private sector standard with which I am familiar is 100 percent. That doesn't mean that every single exception by a bank or trust company is found, but it does mean that you have to clear those exceptions within a reasonable period of time, which is normally one accounting period or 90 days.

Senator CAMPBELL. Thank you.

Thank you, Mr. Chairman.

Senator MCCAIN. Thank you.

Senator Simon.

Senator SIMON. Mr. Chairman, first of all, I thank you for having this hearing.

I have to confess I came here today, like I do frequently to hearings of this committee, thinking I was just going to drop in for a little while and get some information. I have to say I am astounded at what I have heard here—$808 million in unreconciled accounts.

Two fundamental questions. When you say we need an overhaul of the basic system, have you indicated to us or to the Secretary or to anyone what kind of resources you need for an overhaul of the basic system?

Mr. HOMAN. Yes, Senator Simon, we have. Contained in my conceptual strategic plan is an overview of the cost needed over 3 years, and that cost is about $100 million, and it can be implemented as soon as the appropriations are made available.

If it is not, then the status quo will continue and the Government will continue to be exposed to claims of mismanagement.

Senator SIMON. Well, $100 million is a lot of money, but somehow—and I will follow your lead, Mr. Chairman—whatever we can do to get this straightened out.

The second thing that startled me, as you talked about the unreconciled funds, you came up with $38 million in attorney fees.

Mr. HOMAN. Well, we deducted that from the $800 million because we didn't hear any complaints from the attorneys that they didn't get paid, and so we didn't feel we needed to pursue those any further.

The real number there of unreconciled disbursements, as was shown on the chart, is $694 million. That excludes attorney's fees, that excludes certain professional witness fees that we have received no complaints on.

Senator SIMON. But even getting down to $694 million, that startles me. But I have to say I am startled by—and this is not your responsibility, but I am startled by an expenditure of $38 million for attorney fees when tribes have such huge needs in education and health care and other things, that we're spending that kind of money.

Do you have any observations as a trustee of that expenditure, or is that beyond your purview?

Mr. HOMAN. I think Mr. Christie probably has a better answer than I would be able to give on the history here.

Mr. CHRISTIE. These are awards, mainly awarded under the Indian Claims Act, and the attorneys are normally paid 10 percent of the award, so their money comes right off the top. Once the appropriation amount comes from the Treasury, they're the first ones to get paid. That's why it's so large. It's the representation for the judgment awards.

Mr. SIMON. Senator Simon, if I may add to that, my understanding is that the attorney fee awards are established by statute in those cases.

Senator SIMON. All right. I'm not satisfied with that, but I understand.

Senator MCCAIN. Probably a bunch of lawyers wrote it. [Laughter.]

Senator SIMON. And then I read—and this is not from you, but from our general counsel, talking about individual Indian money trust accounts,

No similar effort has been directed at the individual trust accounts.

> Any future efforts to reconcile IIM—Individual Indian Money—trust accounts will encounter the same or worse problems that confronted the effort to reconcile tribal trust accounts.

Is that an accurate statement?

Mr. HOMAN. Yes, Senator Simon; that is an accurate statement. I agree with it.

At the time we were looking at reconciling the overall tribal trust accounts, the Government did take a look at what it would cost to reconcile the IIM accounts, which are the individual Indian money accounts, and there is about, at any one time, between $400 and $500 million in those accounts.

But the outside contractor in 1992 estimated it would take approximately $108 million to $281 million just to go through a similar reconciliation project.

So the Government collectively—the Congress and the administration at the time—decided not to go forward with that type of reconciliation, but to work toward improving that system, instead.

In my strategic plan we have dedicated some $22 million toward fixing that system, and it only awaits funding.

Senator SIMON. Where you have a trust account set up, are people being protected adequately? If you set up an account, the John McCain trust account, is John McCain being adequately protected?

Mr. HOMAN. No; I think the condition of the records and the condition of the trust systems are as bad or worse than they exist for the tribal accounts, as indicated by the results of the reconciliation project.

For example, we have over 50,000 of those 300,000 accounts whereabouts unknown, and there are some $44 million in those individual accounts. One account has over $1 million in it. There are 15,000 accounts, as I indicated in my strategic plan, that belong to former minors who should have been paid upon reaching the age of majority.

There are some legitimate reasons why some of this doesn't take place. Checks come back. People move. But these are extraordinary

numbers of exceptions by anybody's standards and should be addressed and cleared up.

Senator SIMON. I could not agree with you more.

Mr. Chairman, you are our leader on this, and I commend you for having this hearing. Obviously, we have a job to do here, and I will follow your leadership on this.

Senator MCCAIN. Thank you very much, Senator Simon.

I might point out, in today's news media there are reports that the tribes, themselves, are now going to sue or bring suit on the issue of the individual accounts. I don't know exactly what comes of all that, but I think it's clear that the tribes felt that by taking that step that they are unable to receive the kind of services that they are guaranteed under the Constitution.

Do you have any comment on that, Mr. Homan?

Mr. HOMAN. I have no comment on the litigation. That's our policy not to comment.

One of these gentlemen may want to address that.

Mr. COHEN. Mr. Chairman, if I may interject for one moment, we are somewhat concerned about the future with regard to the IIM accounts. The President's appropriation request included funds to address and put in place a better accounting system specifically for IIM. We're not off to a great start over in the House Appropriations Subcommittee, and we're hoping that we can work with this committee to try to resurrect those funds on the Senate side and hopefully in conference.

Senator MCCAIN. Well, let me just say that I appreciate your bringing that up. We have to provide the necessary funds to them to reconcile these accounts. Otherwise, we'll be derelict in our duties, and I can assure you we'll work on this side and try to explain to our friends on the other side of the Capitol how important it is for us to get this done.

Mr. Homan, I want to thank you for your hard work. I want to thank you for the progress that you've made. At the same time, I think there is a great deal more to be done.

One of the options that Senator Inouye and I will be examining will be to just take this whole thing out of the hands of the BIA, because a 20- to 30-year record of total mismanagement is a national disgrace. It's also a disgrace that we, in the Congress, and the American people, have allowed this to go on as long as it has.

I want to thank you.

Do you have any further comments you'd like to make?

[No response.]

Senator MCCAIN. I have a final question. When do you think you'd be prepared to come back before the committee with information or recommendations that we can act on?

Mr. HOMAN. Well, you have my report. The Congress can act on those at any time. I urge them to do so and not await for the completion and all the I's and T's crossed and dotted in my final report.

As soon as the appropriations are available, we can proceed.

Senator MCCAIN. Thank you very much.

I want to thank the witnesses. Thank you for being here this morning.

Our next witness is Linda Calbom, who is the director of civil audits of the General Accounting Office. She's accompanied by Tom

Armstrong, who is the counsel; and Gayle Fischer, who is the assistant director of the civil audits.

Welcome, Ms. Calbom. Thank you. Please proceed with your statement in whatever way you feel necessary. Your entire statement will be made part of the record.

STATEMENT OF LINDA CALBOM, DIRECTOR, CIVIL AUDITS, GENERAL ACCOUNTING OFFICE, WASHINGTON, DC, ACCOMPANIED BY TOM ARMSTRONG, COUNSEL; AND GAYLE FISCHER, ASSISTANT DIRECTOR

Ms. CALBOM. Thank you.

Mr. Chairman and Senator Simon, we appreciate the opportunity to be here today to discuss our work on the Department of the Interior's management of the Indian trust funds.

My statement today summarizes our assessment of Interior's efforts to reconcile Indian trust fund accounts, discusses the usefulness of a legislated settlement process as a means for resolving disputes of account balances, and provides information on the status of Interior's trust fund management improvement initiatives which are needed to ensure that trust fund accounts will be accurate going forward.

In the interest of time, I will only briefly summarize these points. As you indicated, I would request that my statement be submitted for the record in its entirety.

As discussed in our report issued last month, while Interior has brought its reconciliation process to a close, tribal accounts could not be fully reconciled due to missing records and the lack of an audit trail in Interior's accounting systems.

In addition, the report package that Interior provided to tribes in January of this year did not make evident the limitations of the reconciliation process.

For example, nowhere in the package did Interior describe the numerous changes in reconciliation scope and methodology or the procedures that had been planned but were not performed.

Further, as we've discussed here today, due to cost considerations and the potential for missing records, individual Indian trust fund accounts were not included in the reconciliation project.

As you can imagine, tribes have expressed concerns about the scope and results of the reconciliation process.

As Mr. Homan indicated, to date only two tribes have accepted their reconciliation results, five tribes have disputed the results, and the remaining tribes have yet to decide whether to dispute or accept their account balances.

If Interior is unable to resolve tribes' concerns about the reconciliations, a legislated settlement process could be used to resolve disputes about account balances.

Our September 1995, report contained draft legislation outlining such a settlement process. We prepared the report at the request of your committee and the House Committee on Resources to initiate discussions on options for resolving disputed balances.

The unreconciled accounts, however, are only a symptom and not a cause of Interior's trust fund management problems. While Interior has initiated several management improvement actions over

the last 3 years, the needed improvements will take several years to complete.

In the meantime, current trust fund management and accounting systems and controls remain inadequate to ensure accurate trust fund accounting and asset management.

Unless Interior corrects its longstanding weaknesses in these areas, it may be faced with additional reconciliations and settlements in the future that, as we've discussed today, are very costly.

The appointment of the special trustee for American Indians was an important step in establishing high-level leadership at Interior for Indian trust fund management. As you know, the Office of the special trustee was implemented in February of this year. The special trustee has recently developed a concept paper, which he was discussing today, that outlines the needed trust fund management improvements. This concept paper is a positive first step, but will need to be expanded to include various options and alternatives and their associated costs and benefits, and will ultimately need to be developed into a comprehensive strategic plan.

The bottomline here is that solving Interior's trust fund management problems will require comprehensive planning, management commitment across all Indian trust fund program offices, and, of course, additional resources.

That concludes my prepared comments. I'd be happy to answer any questions that you may have.

[Prepared statement of Ms. Calbom appears in appendix.]

Senator McCAIN. Thank you very much, Ms. Calbom.

On page 10 of your written testimony you state, "There is no assurance that the ownership information in BIA's accounting system is accurate." Why is that?

Ms. CALBOM. There are problems such as—when land is transferred, or there are sales, that kind of situation—with hold-ups in that information being submitted and recorded in the systems. In addition there are data consistency problems between the different systems that are operating. Some systems are driving the accounting, some systems are driving the actual ownership. It's a basic problem with the systems. The bottomline here is the systems are horrible. That's what Mr. Homan was indicating, and what we have concluded based on everything that we've seen over the years in the work that we've done.

Senator McCAIN. Have you ever seen anything like this?

Ms. CALBOM. I was in the private sector for about 11 years—in public accounting—and, as I've told others, this situation is much worst than the worse client that I ever saw in the private sector, and I had some real basket cases. [Laughter.]

Senator McCAIN. Again, on page 11 you say,

> As a result, BIA does not know the total number of leases that it is responsible for managing or whether it is collecting revenues from all active leases.

How in the world can you ever get a reconciliation if BIA doesn't know the total number of leases that its responsible for managing or whether it's collecting revenues from all active leases? Where is the light at the end of the tunnel here?

Ms. CALBOM. You really can't. You're right. The reconciliation really was only related to records that they can find, and this is

one of the big concerns that we've had all along, the fact that the universe of leases is not known.

It is not only leases. There are other types of transactions for which the real universe is not known at this time.

We believe that's one of the important things that needs to be addressed. BIA needs to go out there and make an inventory of the leases, establish an accounts receivable system so it knows what's due to the tribes, and then followup, as any commercial enterprise would do. You know what's owed to you and you followup and make sure that it gets collected in a timely manner.

Senator McCain. And none of that's been done?

Ms. Calbom. None of that's been done.

Senator McCain. Again, in your written statement you say, "In addition, BIA and OTFM have not developed a comprehensive set of trust fund management policies and procedures."

How long ago were they told that they should develop a comprehensive set of trust fund management policies and procedures?

Ms. Calbom. I think that it's been some time ago. I don't know the exact date, but I know that in preparing for this hearing, many of the reports that I read that GAO has issued, have included recommendations to that effect.

I don't know, Gayle, if you know any more details on that.

Senator McCain. Ms. Fischer, 1 year,.2 years, 5 years?

Ms. Fischer. Beginning with our April 1991, testimony to the House Appropriations Committee.

Senator McCain. So at least 5 years ago the BIA was told that they should develop a comprehensive set of trust fund management policies and procedures?

Ms. Fischer. That is right.

Senator McCain. And they acknowledge they have not done that yet?

Ms. Fischer. That's true.

Ms. Calbom. I think, Mr. Chairman, there has been some progress made recently, and we do indicate some of the progress that's been made in our testimony; however, one of the issues that I see is that BIA does not have a comprehensive set of policies and procedures. It has been piecemeal, for one thing. But one of the big things is the internal controls that are necessary are just not in place.

Policies and procedures are no good unless you've got controls to make sure they're being implemented as planned, and that's a major problem, as well.

Senator McCain. In your "GAO observations" on page 13—and, by the way, this is an excellent, in-depth report, in my view, and I appreciate it.

Ms. Calbom. Thank you.

Senator McCain. "Three major factors: Lack of comprehensive planning, lack of management commitment across the organization, and limited resources."

First of all, limited resources may be the fault of Congress. Do you agree?

Ms. Calbom. That's where the resources come from.

Senator McCAIN. Exactly. So I think the record ought to be clear that Congress perhaps has not carried out our end of the bargain in this effort, as well.

Let me go back to probably the most disturbing factor to me: Lack of management commitment across the organization.

Can you elaborate on that conclusion?

Ms. CALBOM. Yes; I think the problem that we're seeing is that it has been this way for so long, and that's what Mr. Homan is indicating, as well, and people are not changing their ways. There are policies and procedures that were developed and were put out to the field, but they aren't being followed and there is no followup to make sure they're being followed, as I was mentioning earlier—the control issue.

But I'd like to let Ms. Fischer address some of the specifics for you on that issue, if I may.

Senator McCAIN. Okay.

Ms. FISCHER. This is a problem across BIA's offices. As you know, BIA is organized with an Office of Trust Responsibility. BIA also has 12 area offices and about 85 agency offices, and I think about 49 BIA agency offices are still involved in trust fund accounting functions—not counting the OTR realty functions and land ownership functions that are also performed at the agency offices. So you've got 60, or, depending on how you look at it, maybe 100 different BIA offices involved in trust management.

They are not performing functions consistently; they're not following procedures consistently. OTFM has not been able to effectively implement its quality assurance review of these functions because of budget cuts it has had in 1995 and 1996.

We have indications from our work that not all individual Indian account holders are receiving account statements. Where they are supervised accounts, guardians should be receiving those IIM account statements. Not every agency superintendent is releasing those statements to the guardians. They are holding them.

It was 2 or 3 years ago—and we understand this hasn't changed—when we looked at selected agency offices and their billing practices we found that they did not have an automated accounts receivable system; they had a manual tickler file in most cases. They would send a bill out; but, they would not know whether the entire amount of the bill was collected—whether it was a partial payment or nonpayment in order to followup, in all cases.

We understand the trust fund loss policy was issued to area and agency offices. However, there is not a clear indication that those new policies are being followed.

With regard to daily cash reconciliations, there are ongoing reconciliations that the field offices are performing now and they need to resolve discrepancies timely. OTFM has been trying to get out there and ensure that's done, but OTFM is finding that it's not being automatically done, and the field offices need a lot of help.

That's one of the reasons we believe centralization of some of these functions in terms of detailed accounting and processing would be helpful, because it would force standardization, which you can't achieve now.

Senator McCAIN. It seems to me that this may argue again for removal of this entire responsibility from the BIA.

Have you, Ms. Calbom, any rough estimate as to how much funding is necessary in order to move this process forward?

Ms. CALBOM. Mr. Chairman, we have——

Senator MCCAIN. Roughly. Maybe you want to submit it for the record. I don't know.

Ms. CALBOM. We haven't done any work that would allow us to make that kind of an estimate. What really is needed to do that, which is what we do indicate in our testimony, is this comprehensive strategic plan. I think that you need to look at the various alternatives and options and the cost-benefits of those.

We have looked at the concept paper that Mr. Homan has prepared, but, as we noted, we think that other avenues need to be explored in coming up with a cost estimate. However, that would be a very significant effort.

Senator MCCAIN. If you accept the premise that we're never going to find a lot of these records—tragically, I think we have to accept that—then are you going to have to go ultimately to some kind of reconciliation or mediation process where the parties come in and say—you know, you sort of try to make the best of what information you have. Is that going to be the ultimate result of all of this?

Ms. CALBOM. I agree with you. I really don't think there is much more that can be done as far as this reconciliation process at this stage. What we have reported is that a legislated settlement process is a potential means to resolve this issue.

Mr. Tom Armstrong from our Office of General Counsel maybe could say a few words about what that would entail.

Mr. ARMSTRONG. Mr. Chairman, I guess it was about a year ago when we testified, and we came to the conclusion that—as you say, the tragic conclusion—that the records are not there.

We were brainstorming back at GAO about how can you accommodate that in a way to bring some finality to this whole process so that you preserve the rights of both parties and you do it in a way that is not going to be costly to either party? That's when we, in doing literature searches and talking to attorneys out in the field, came up with the idea of mediation and arbitration.

That's what we proposed in the draft legislation that we sent forward to you in the fall, because we felt that mediation and arbitration would give both parties a bit more flexibility, and that it would result in some finality, the account balances would be resolved. Evidence shows that it's not as costly a dispute resolution process as litigation would be.

But we felt that with the condition of the evidence, that really the only options available to Congress and the tribes and the Government would be litigation, some sort of mediation or arbitration, or just some sort of legislated amount for the accounts, which would be very difficult to do.

Senator MCCAIN. And I don't think that Congress would object to such a solution as you are proposing, but I don't see how we could go forward with that proposal unless we have some kind of assurance that the problem is cured.

Right now, I have absolutely no confidence that this problem is not only not being addressed but is still the subject of gross mismanagement.

Ms. Calbom.

Ms. CALBOM. Mr. Chairman, that's one of the issues that we're concerned with, as well.

When we put forward this proposal of a legislated settlement process, it was our anticipation that they would have begun curing the systems problems and that would be part of the solution going forward, but, you know——

Senator MCCAIN. Clearly they are not.

Ms. CALBOM. They are not.

Senator MCCAIN. Senator Simon.

Senator SIMON. Again, first of all, I want to thank those from GAO. I am just astounded at all of this.

When you say

many of our past recommendations for management improvements,

> while BIA and OTFM have begun actions to address many of our past recommendations for management improvements, progress has been limited.

We're just inching ahead, I gather. We're really not moving on this problem in an aggressive way; is that correct?

Ms. CALBOM. I think that's correct. I think that the actions that have been taken, as I was mentioning before, have been piecemeal type actions, and we really need to do a comprehensive overhaul here.

First, you've got to have a good strategic plan so you're analyzing the different alternatives and options and looking at those different costs and benefits, but, yes, there needs to be a major change here to correct these problems.

Senator SIMON. And some of the things—for example, you say, "BIA does not have a master lease file as a basis for determining its accounts receivable."

Ms. CALBOM. Right.

Senator SIMON. That's not an expensive item. Some basics clearly ought to be done.

Mr. Chairman, when you say we have to look at alternatives at BIA, I am willing to take a look at something else.

It occurs to me that we ought to ask the Secretary of the Interior to come in and testify on this. I'm not suggesting that this is his fault, because this has happened over a long period of years.

Senator MCCAIN. Many years.

Senator SIMON. But clearly we have to get the attention of top administrators, as well as our colleagues in Congress, that this situation has to change.

I am rarely startled when I go into a hearing, but I have to say I have really been stunned by what I have heard this morning, and I thank you for having the hearing.

Senator MCCAIN. Thank you very much.

Secretary Babbitt was invited to attend this hearing with Mr. Homan and declined to do so. I regret that. Perhaps we can——

Senator SIMON. I think that should be pursued further, and I would be happy to join in that request. I'm sure the vice chair would be happy to join in that request.

When you have this kind of money floating around without clear accounting, the abuse that it invites is the kind of thing that really causes people to lose confidence in Government.

We have an obligation to a lot of people. I think the invitation to Secretary Babbitt has to be pursued, and I would be happy to call him or whatever I can do to be of assistance on that, but I think we have to have top people come in here, and they have to understand we have to have some changes here.

Senator McCAIN. Thank you very much, Senator Simon.

I want to thank all of you, and I appreciate your efforts. We'll continue to work with you, and I want to assure you that we will not give up on this issue. It's terribly frustrating and terribly painful and, unfortunately, indicative all too often of our Government's treatment of Native Americans, but that doesn't mean that we should give up our efforts to see that these individuals and tribes receive the benefits which are rightfully theirs.

I thank you. I thank the witnesses.

Ms. CALBOM. Thank you, Mr. Chairman.

Senator McCAIN. Now we have Mr. Eric Davenport, who's the chairman of the Inter-Tribal Monitoring Association of Indian Trust Funds from Juneau, Alaska; and Ivan Makil, president of Salt River-Pima Maricopa Indian Community and member of the Advisory Board of the Special Trustee.

We welcome both witnesses. I want to make sure you know that your entire statement will be made part of the record, and I want to especially thank both of you for your efforts and the very important and vital input that you make into this process.

Mr. Davenport, welcome.

STATEMENT OF D. ERIC DAVENPORT, CHAIRMAN, INTER-TRIBAL MONITORING ASSOCIATION OF INDIAN TRUST FUNDS, JUNEAU, AL

Mr. DAVENPORT. Good morning, Mr. Chairman and members of the committee. Thank you very much for scheduling this oversight hearing on this critical issue to Indian country.

My name is Eric Davenport. My Tlingit name is Tukahan. I am the chairman of the Inter-Tribal Monitoring Association on Indian Trust Funds and the executive officer for the Central Council of Tlingit and Haida Indian Tribes in Juneau, AK.

I wanted to talk about three main issues this morning: First of all, the reconciliation report, what it involves and what it does not involve; the trust fund management reforms that have been implemented to date and some of the reforms that are needed yet to occur; and then, finally, the need for the committee's continuing support and oversight on this issue.

I think it's important that we remember that the Trust Fund Reform Act of 1994 requires that the special trustee ensure that all tribes receive a fair and accurate accounting, and that the responsibility to date has not, in fact, been met.

We have talked about the amount of money, $20 million in 5 years in doing this task, but then, when it's all said and done, Arthur Andersen disclaims the reconciliation as "not an audit made in accordance with generally-accepted audit procedures." And they also do not express an opinion on any of the work elements of their reconciliation report.

One of the things that this committee needs to keep in mind is that when we initiated this effort, we initiated it with a very broad perspective, broad scope. We're going to take a look at this issue.

Over the course of the 5-year effort, there were at least nine, possibly more, official modifications to the contract. There were over 120 unofficial issue papers issued. Each of these modifications to the contract narrowed the scope, narrowed the scope, and narrowed the scope.

So what we have now is a very limited view of the real issue, not a broad picture of what we had started out and what you had started out wanting to see.

The Trust Fund Reform Act requires that each tribe either dispute the report or accept—dispute their balances or accept their balances, and there was a provision to request a continuation of time for them to consider the issues there.

It may be possible for some tribes to actually come to concurrence. There were two that accepted the report, five declined, many said they needed more time, but there may be some tribes that have limited amounts of funds in their account and they—and little amount of activity, and they may, in fact, be able to reach some kind of negotiated settlement with the Government. If that's the case, then we encourage them to do that.

On the other hand, it seems certain that many tribes, if not most, with substantial amounts of money don't have the information necessary to enter into any kind of settlement agreement on this issue. The data isn't there.

So it's critically important that this committee not be mislead into thinking that we are now moving into a settlement process, because more information must be obtained before tribes can really go to the table and begin to talk about some of the issues at hand here.

I don't want to recant much of the information that we've talked about and what the reconciliation report doesn't include. We've all talked about the $2.4 billion. I do think that it's important, though, to hit a couple items that we haven't talked about thus far.

First of all, the $17.8 billion from which that $2.4 billion is missing relates to the non-investment transactions. During that 20-year period, there was $200 billion in investment transactions. That was not considered. That was not reconciled.

So if we put that into some perspective and we look at the $2.4 billion on $20 billion, that represents 10 percent of unreconcilable information.

If we expand that now to the $200 billion in investment transactions and we assume a similar 10 percent, we're talking about $20 billion, and we haven't begun to talk about the missing leases that can't be identified and a lot of the other things.

So when we talk about $2.4 billion and we talk about the reconciliation, we're talking about the tip of the iceberg. We're talking about some very limited, very narrow-scoped issues. We're not talking about the broader picture.

It is also important to note that there were no beginning balances. We've talked about mismanagement for 20 or 30 years. Well, you have to realize that the trust fund accounts for many tribes extend more than 100 years, and there is no beginning balance at

1972. There is no magic here that says at 1972 what that balance is that they began to reconcile against is accurate there. It didn't just all of the sudden get out of whack. It was out of whack then. So there is no beginning balance at the start of the reconciliation process, and I think that needs to be pointed out.

Finally, in many tribes up to 50 percent of the documentation was missing for support of that transactional activity during that time, so in many cases we're talking about some very large numbers.

We pointed out—and I would be remiss if I didn't comment that the reconciliation did not deal with the IIM issue, the individual Indian money accounts. There are 300,000 such accounts, up to $500 million in these funds. That's very important. Nor did it address several of the trust accounts which the Government has managed on behalf of Alaska Natives during the Claims Settlement Act.

Both of these require the fairness of reconciliation that was given to the tribal accounts.

The second point that I want to make deals with the reforms that have been made and what yet needs to be done.

First of all, I want to commend Mr. Homan. I have been involved in this issue from 1991 on. In recent years I've heard many testimonies by the Department. Mr. Homan's testimony was as forthcoming as we have heard. It's good to see that somebody in that position is now coming forward and speaking what is actually out there.

But I think that we need to also realize that during these last 5 years that the Office of Trust Fund Management, OTFM, has been reorganized.

The number of staff there has been increased, and the qualifications have been improved.

They now have an automated trust funds accounting system that daily reconciles and posts activities to accounts.

The appointment of Mr. Homan as special trustee—and you've talked about his credentials—represents the first time that the Department has had anybody in that office or within the Department that has a trust or banking background.

And finally, of course, there is the 1994 Trust Fund Reform Act.

So there have been some advances, but we have talked about many of the huge gaps that remain. One of them we talked about, of course, was the accounts receivable system. It's hard to believe that we don't have one. But also there is no centralized custodial services for securities that are held in the trust portfolio. These securities are scattered all around the country. There is no single repository for them.

Also, there is no automated accounting system for the IIM accounts.

So when we look at this in some perspective, I think that we can be glad that advances have occurred, but I think that we also, at the same time, feel extreme and great frustration over where we stand today, and that the problem continues to exist, it continues to compound, and it continues to get worse.

Finally——

Senator McCain. You think it continues to get worse?

Mr. DAVENPORT. Yes; there is no accounts receivable system out there, so you know that there are problems that are still occurring. There are lease payments that aren't being made, and it's not there.

The support of the committee has been very important in this process. Without it, some of the reforms and advances that we've made could not have occurred. Your continued support is very important in the future.

Also, we believe that the special trustee must have the additional resources necessary to implement the systems, to put them in place. That's critical. We think that technical assistance funds are needed for tribes so that they can truly engage in a process of self-determination regarding these issues. That could well include management of IIM accounts.

ITMA believes that it's in the best interest of the Federal Government to assist those tribes who desire to take over these activities and relieve the Government of their responsibilities if tribes wish to do that. So technical assistance from this perspective is very important.

ITMA and tribes greatly appreciate the committee's support in the effort to correct the gross mismanagement of Indian trust funds and trust assets during the past 150 years, and these reforms would not have been achieved had it not been for tribes, themselves, involved in the process, and we realize that we would not have been at the table if this committee had not supported that process.

If the committee were not to be engaged and not to be involved in the process, I can almost assure you that very little else will be done on this issue.

Additional reforms are required and full implementation of the 1994 Reform Act is imperative.

We look forward very much to continuing to work with you, and I'm available for any questions.

Senator McCAIN. Thank you very much, Mr. Davenport.

[Prepared statement of Mr. Davenport appears in appendix.]

Senator McCAIN. I want to assure you that as long as Senator Inouye and I are here, we will continue our active involvement and participation.

I thank you for all that you have done, and I also want to thank my friend, Chairman Ivan Makil, who is our next witness.

Ivan.

STATEMENT OF IVAN MAKIL, PRESIDENT, SALT RIVER-PIMA MARICOPA INDIAN COMMUNITY, AND MEMBER OF THE ADVISORY BOARD TO THE SPECIAL TRUSTEE, SCOTTSDALE, AZ

Mr. MAKIL. Thank you, Mr. Chairman, Senator McCain, and others. I appreciate this opportunity this morning to come before you and present or at least discuss information.

I won't take a lot of time in presentation. You have a copy of my testimony, which I would like to have submitted for the record.

Senator McCAIN. Without objection.

Mr. MAKIL. Thank you. And I will just actually get right down to the nuts and bolts of this whole issue because, as a member of the Advisory Board and as a tribal leader representing the Salt

River-Pima Maricopa Indian Community, it's important to not waste a whole lot of time rehashing what we all know has been a major problem that tribes have faced for so long.

There are $2.4 billion unreconciled. It's just unbelievable that that would still happen, especially when tribes are held, in terms of our own processes when we deal with the BIA and Department of the Interior, if we cannot account for funds, whether they be grant funds or funds that come through our regular tribal allocations, our programs get held up.

There is a—we take responsibility for the non-performance of our governments, and this Department should not be any different. It needs to be held responsible for non-performance—mismanagement, if you want to call it that. But this is historical.

The question really comes—and we have, as tribal leaders, asked the question: What is going to be ultimately the fully extent of the Government's liability in this situation? What might that be?

It doesn't—it's not rocket science to understand that any of the information that has been brought here today, as you well have heard, is not in the best interest of the Department, and therefore we have had major concerns about the fact that the special trustee has not had, I believe, the freedom to speak frankly about some of these issues to tribes.

We've had representatives at several meetings where information is given about this Total Reform Act, and it's presented by the people who are mismanaging the funds.

Now, there is some great concern about that when the trustee that is appointed to represent our interests—because we thought all this time that the Interior Department was representing our interests, and we find that not to be true.

Now, through the work that you have done, Senator, and others in the committee, we finally have an opportunity to have someone in place that will look out for our interests, and he's being prevented from that happening.

He has made statements that he has personal and professional opinions, but has been told not to speak about certain issues.

That only further begins to create more distrust between tribes and the Federal Government. There is enough distrust as it is, but to continue to cause this to happen by preventing the trustee from being allowed to speak very frankly about a number of these issues just is not acceptable.

I guess when you get to the point of the concern for cooperation, that there is definitely a lack of cooperation from the Department, itself.

Mr. Homan has created, in a couple of months, a plan that is more than has been created in the last 6 years by Interior, and in 2 months has brought a plan that has a price tag of approximately $2 million that could be implemented.

What we're hearing now is that Department of the Interior is not able to find $2 million in their $12 billion budget to bring this process about.

There weren't even dollars for the Advisory Board to be able to meet, so therefore no tribal representation exists.

I guess it's just—it's really unfortunate, but for we as tribal people it just seems—we thought that all of this type of mistrust was

behind us. We thought that we finally had approached the age where there was trust and respect, and the whole idea of self-determination and self-governance was coming into being, but here we are again, and I don't even want to think about how many years later it has been.

But even more recently with self-governance efforts we're hearing these words, "Trust me. We can fix it." It's been too long, and we as tribal leaders are saying now, "No. Not this time."

We can't allow tribal people or tribal representation to be excluded from decisions that are going to be made for us. We can't continue this process.

Without continuing to belabor those points and that issue altogether, let me try to get to something that I think has been raised by several people here.

The continued lost confidence in this system is not going to be easily regained, but, as patient as we have been and as reasonable as we have tried to be, the kind of law suits that are being filed are a point of frustration. We have no alternatives. Negotiation mediation versus any type of litigation is really the way that tribes continue to prefer to go, but it will not change until some basic things happen.

In my testimony there are some proposed solutions, and I would like to just review them very quickly.

First, in terms of the funding, for fiscal year 1997, 1998, and 1999 an amount equal to one-half of 1 percent should be taken from every line item in the Interior Department budget and transferred from that line item to a fund to correct the trust systems.

This would raise, we estimate, approximately $60 million, which would not, I don't think, significantly hamper any of the Department's budgets.

Second, to amend the Reform Act to convert the Office of Special Trustee and the Advisory Board into a control board similar to what Congress created when it concluded that the government of the District of Columbia was incapable of reforming itself.

We think that that's extremely important so that there would continue to be some guidance provided, and that guidance would come from the tribes.

Let me also mention here why that is so important.

One of the things that at least we in Salt River had recognized for a long time is that the left hand and the right hand always have to know what each other are doing, and while we can correct or at least maybe not with what we have now, but hopefully what we can correct is this accounting system.

The other system that needs to be corrected is the land records management, the allotees/allotment processes, because that is where a lot of the records we know or have experienced get lost.

In Salt River, the BIA calls us to look at our records so they can reconcile theirs.

That's really important in helping to correct and clean up systems, because there are tribes that have developed a level of sophistication that they can move on.

The third is to amend the Trust Fund Reform Act to give the special trustee the independent authority to file suit in Federal court when it's necessary.

With those, I would leave myself open for questions. Thank you very much.

[Prepared statement of Mr. Makil appears in appendix.]

Senator MCCAIN. Thank you very much. I appreciate the testimony of both witnesses.

I have to go to the floor. I'd like to ask Senator Dorgan if he'd like to question, and then Senator Gorton.

STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR FROM NORTH DAKOTA

Senator DORGAN. Mr. Chairman, I regret I had two other hearings this morning, and so I was not able to be present for all the testimony, but I appreciate the Chair's willingness to hold these hearings.

I would hope that Secretary Babbitt would come to a future hearing and accept the invitation of this committee. I think that's important.

You raise critical questions. I don't, for the life of me, understand how we can talk about $20 million here, $18 million there, $100 million as representing the need in order to keep track of these trust funds. You can plug all the money you want into these programs and systems, but if you don't have people with some common sense who construct a system that works, it's not—nothing is going to happen here.

So I hope that, through the process of holding these hearings and eliciting the answers, that we will get this back on track.

If I were sitting on the other side of that table, I would be furious about what has happened with respect to the lack of good management of these trust funds. And it's not just happened in the last 6 months or year; it's grown up over many years.

I appreciate very much your testimony. I regret I wasn't able to be here for the entire hearing.

I do hope that Secretary Babbitt will accept an invitation from this committee to come and present testimony, as well.

Senator GORTON [ASSUMING CHAIR]. Thank you, Senator Dorgan.

I could do a lot worse than simply repeat the comments you have made. It does seem that since we've appointed the special trustee we've at least begun to learn what the depth and complexity of these problems and challenges are, but we clearly have a long way to go, and we clearly are seeing another instance of why more of this authority ought to be lodged in the individual tribes and nations and fewer in bureaucrats here in Washington, DC.

With that, I'm also very much a late-comer to this hearing. I've wanted to understand what the nature of the problems were.

I know that there were many other witnesses that have come from outside Washington, DC, who wish to be heard. The two of you have really had to speak for all of them.

I believe the chairman has already said, but it will bear repeating: anyone else who wishes to contribute to our understanding is able to do so in writing or in future hearings.

With that, we thank these two witnesses and the hearing is adjourned.

[Whereupon, at 9:59 a.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

Additional Material Submitted for the Record

Prepared Statement of Hon. Daniel K. Inouye, U.S. Senator from Hawaii, Vice Chairman, Committee on Indian Affairs

I thank my chairman for scheduling this hearing today on a matter that is of utmost important to the Indian tribal governments and the individual Indian people whose funds are held in trust and managed by the Department of the Interior.

In their long-held and strong interest in this matter, the members of this committee, I believe, reflect the concerns that have been consistently expressed from Indian country over the years.

Certainly, our former colleague, Congressman Mike Synar, did much to assure that the attention of the Congress remained focused on ensuring that the Indian Trust Funds were properly managed.

As most of us know, for the most part, financial resources are not plentiful in Indian country.

Though Federal efforts to encourage economic development in reservation communities have been sincere, they have not always been successful.

The resources that have been realized from—

- Land use agreements, including the leasing of Indian lands for grazing, timber and mineral development;
- Royalties associated with the extraction of oil, gas and coal; and
- Income on the investment of tribal judgment funds;

As trustee for these resources, the United States is held to the highest fiduciary standards.

To assure the account holders that their funds were being managed in accordance with these standards, the Congress has not only conducted numerous oversight hearings over the years, requested studies of the Interior Department's Inspector General and the General Accounting Office, but has enacted legislation which authorized a complete reconciliation of trust accounts.

Because of lost records, time constraints and financial limitations, we are told that this reconciliation effort was not capable of being completed.

These are not the results of a 5-year, $21 million effort that we would proudly announce in Indian country.

But I am concerned that if the Federal Government doesn't make a mid-course correction at this point, we will only have served to compound the problem.

As the May 1996 report of the General Accounting Office observes, the United States has provided the tribal account holders with a lengthy report on reconciliation without providing full disclosure of the gaps in the reconciliation process.

For instance, if I were a tribal account holder, I would want to know such things as—

- What a full reconciliation process would entail, and what was actually done;

• Which of the procedures that are part of a full reconciliation process were performed and which were not;

• What kinds of records were missing—what dates or years those records represent—and how the absence of those records affect the reliability of the information presented to me;

• Whether the most complete accounting possible was in fact conducted; and

• Whether the reconciliation procedures performed were consistent with the standards established by the industry.

In my view, if this information has not been provided to the tribal account holders, it ought to be, and I would like to hear from the witnesses here today, whether it is indeed still possible to provide the tribal account holders with this kind of data.

As trustee for these Indian funds, the United States bears a special responsibility to the account holders.

And if a fair and proper settlement of these matters is ever to be achieved, the tribal account holders must be provided with all of the information that the Government has—not just that which the Government deems appropriate for the account holders to have—and not just the records, but an identification of what may be missing from those records, and what impact the missing data has had on the integrity of the reconciliation process.

I think we all recognize that this is no small undertaking, and that the Department of the Interior has stretched its own limited personnel resources to the maximum.

But we have also provided ample compensation, at Federal expense, to private sector companies to perform these tasks—and I would hope that, at a minimum, on behalf of the tribal account holders, we might expect and demand of them full disclosure.

The General Accounting Office advises us that there are 275 tribes that have yet to respond to the reconciliation results.

Perhaps they are looking for the very kind of information that I have described—information on which they might be able to better make an informed decision.

Mr. Chairman, like you, I look forward to the testimony the committee anticipates receiving today.

PREPARED STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL, U.S. SENATOR FROM COLORADO

Mr. Chairman, thank you for providing me with the opportunity to make a brief statement, and thank you for holding this oversight hearing on the Department of the Interior's management of Indian trust funds.

It has been nearly 2 years since Congress enacted, and the President signed into law, the American Indian Trust Fund Management Reform Act of 1994, Public Law 103–412. I strongly supported this piece of legislation, which reformed how the Department of the Interior carries out its responsibilities with regard to the tribal funds, held in trust by the Federal Government for more than 150 years.

This Act also provided for some degree of accountability on how these funds are to be managed, accountability procedures which were previously lacking despite the large amount of money which flows through the funds. Due to the nature of the responsibility and the money involved, this act was developed to reform a system which was largely in chaos.

The act established the Office of Special Trustee for American Indians, within the Department of the Interior. While I am confident tremendous progress is possible, I do have some concerns about the Department's handling of these funds, specifically regarding the reconciliation of the accounts.

First, the audit conducted by Arthur Andersen and Company disclosed that the Bureau of Indian Affairs cannot account for $2.4 billion of the money held in trust for the tribes. This equates to one out of every $7 dollars that is technically missing from the funds with no paper trail to possibly locate where this money went. Given the severity of this problem, I am interested to know what the Department is doing to address this issue, both through its negotiations with various tribes and by improving upon the mechanisms and procedures used to reconcile these accounts.

On that note, I am also interested in hearing more about the strategic plan which will be submitted to Congress and the Secretary of the Interior by the Special Trustee. Given the amount of controversy and distrust surrounding the management of the trust funds, I would like to know in what ways the plan would allow tribes to become more active in managing their own trust funds.

Finally, I would like to hear more about the "interim" reconciliation report which was submitted to Congress on May 31, 1996. Specifically, given that the report did not include a reconciliation of trust fund accounts as of the end of fiscal year 1995, I am interested in knowing when that information will be made available to this committee.

I am hopeful this hearing will allow members of this committee to accurately understand what is being done to carry out the requirements of the act. In particular, it is important that the Federal Government improve upon its handling of the tribal trust funds, so that it can uphold its commitment to Indian people and tribes. I look forward to the testimony which will be provided this morning, and I thank you.

Prepared Statement of Hon. Byron L. Dorgan, U.S. Senator from North Dakota

Mr. Chairman, I would like to thank you for scheduling this most important hearing. Like you, I was extremely concerned to learn that the Department of the Interior cannot account for approximately $2.4 billion held in trust by the United States for Indian tribes.

I have been disturbed by this issue for some years now. In 1992, I authored a report on Government waste which recommended that immediate steps be taken to improve the financial management of the Bureau of Indian Affairs [BIA]. One important step toward that goal was the enactment of the American Indian Trust Fund Management Reform Act of 1994, which is designed to significantly reform how the Department of the Interior carries out its responsibilities with respect to trust fund dollars.

Unfortunately, the May 1996 General Accounting Office report, "Financial Management: BIA's Tribal Trust Fund Account Reconciliation Results," indicates that we are still a long way off from sound financial management of the BIA. For example, the GAO found that the BIA's reconciliation contractor was unable to account for 32,901 tribal noninvestment receipt and disbursement transactions totaling $2.4 billion. What's more, the BIA could not determine the total amount of receipts and disbursements that should have been recorded, nor did it have any kind of reconciliation procedure which would have addressed the completeness of the accounting records.

Within this framework, it's no small wonder that tribes in North Dakota and across the country have raised serious concerns about the reliability and accuracy of the Interior Department's attempt to reconcile the trust fund accounts. I urge the Department to make every effort to address these questions immediately.

We must secure further improvements in the management of trust fund accounts to keep faith with American taxpayers. Equally important, we must ensure that the Federal Government exercises its trust responsibility to Indian tribes, which depend on an accurate accounting of the financial resources contained in these accounts for long-range economic planning purposes.

I look forward to working with my colleagues on this committee to rectify the apparent inability of the Interior Department to balance its trust fund account books and to ensure that the letter and spirit of the American Indian Trust Fund Management Reform Act are fully implemented.

Prepared Statement of Hon. Frank H. Murkowski, U.S. Senator from Alaska

Mr. Chairman, today we hear disturbing testimony about unacceptable mismanagement of Tribal Trust Funds by the Bureau of Indian Affairs [BIA]. We are told that the BIA can not verify over 32,900 transactions involving $2.4 billion held in trust for Indian tribes. Over $100 million of this total were disbursements to tribes in Alaska. The BIA simply does not know what happened to the money. The BIA does not know how much of the money is missing, was misappropriated, or was stolen. Nor does the BIA know the extent of the moneys it appropriated to the correct people; the necessary documentation is missing.

Americans, particularly members of Indian tribes, are understandably outraged with this mismanagement. Claims over past disbursements must be resolved. Most importantly, a system of competent accounting must be put in place and maintained by people trained and able to handle these accounting procedures. For too long the Senate has heard horror stories concerning BIA mismanagement of funds. These shoddy practices must stop.

It is important to remember that this problem is just the tip of the iceberg. The BIA has spent nearly 5 years and about $21 million studying only part of the problem. It did not look at the several hundred million dollars it handles in Individual

Indian Money accounts. It did not look at the several hundred billion dollars it handles in investment transactions. And it did not find necessary records in other key areas like missing leases, and lease income records.

We need three things to solve this problem: (1) A reliable system of accounting; (2) the funds to enact this system; (3) trained, competent people to run the system. Without all three components, I do not see an end to the mismanagement.

Mr. Chairman, before the people of Alaska elected me to the Senate, I was a banker. I have worked with accountants for most of my adult life. From my experience, I can assure you that the accounting procedures by the BIA are appalling and simply unacceptable. But do you have to be a banker or an accountant to know how serious this problem is? Of course not.

We need more than apologies and acknowledgement that there is a problem. We need a definitive answer to the following question: If the Office of the Trustee is given adequate funds to enact the system, will the problem be solved? If the answer is anything but an unhesitating "yes", then we need to explore options other than giving the Department of the Interior another chance and yet more time to fix the problem.

This is indeed a disturbing matter which merits attention from the highest levels of the Department of Interior. I am disappointed that Secretary Babbitt did not accept an invitation to testify before this committee today. Does his absence mean that he does not believe his Department can solve this problem? I urge the Secretary to testify before the committee once the Department issues the final report. And I urge the committee to monitor this issue with great diligence. All Americans deserve far better than to be further burdened with this legacy of BIA mismanagement.

PREPARED STATEMENT OF ERIC DAVENPORT, CHAIRMAN, INTERTRIBAL MONITORING ASSOCIATION ON INDIAN TRUST FUNDS

Mr. Chairman and members of the committee. Thank you for providing this opportunity to appear before the committee to provide testimony on this issue of such vital importance to so many Indian tribes and individuals.

The Indian Trust Fund Management Reform Act of 1994 requires the Special Trustee to ensure that the Bureau of Indian Affairs provides trust fund account holders with "a fair and accurate accounting of all trust funds". After an expenditure of about $21 million and over 5 years of effort, the BIA contractor, Arthur Andersen and Company, has produced a reconciliation report which explicitly states that it is not "an audit made in accordance with generally accepted auditing standards". Arthur Andersen also does not express any opinion on the work elements of their reconciliation report. In view of these disclaimers and what we know about how the reconciliation was performed, we believe that the reconciliation report cannot be viewed realistically as meeting the requirement for a "fair and accurate accounting".

The initial scope of this reconciliation contract began as a broad effort to achieve reconciliation of tribal accounts, but for a number of reasons this objective could not be achieved. This contract was "officially" modified numerous times, and "unofficially" modified more than one hundred twenty [120] times by "issues papers." The resulting tribal reports are not what we were led to believe that they would be when we began this exercise. Instead, tribes have very qualified, incomplete information of very narrow scope.

The reconciliation grew out of a BIA proposal in the mid-1980's to transfer much of the trust fund administration to a private financial institution. The tribes were concerned that the move would lock in their current account balances, which the BIA admitted could not be verified, and would bury the errors of the past. In response to the tribes' concerns, in 1987 the House Interior Appropriations Subcommittee instructed the BIA to conduct a reconciliation, audit and certification of tribal and IIM accounts before it contracted out any trust functions. The purpose of this was to be able to provide the account holders with reasonable assurance that their account balances were accurate.

After 3 years of delay by the BIA, the OMB Deputy Director for Management and the Comptroller took charge of the process. They quickly concluded that there was no point in asking Arthur Andersen to try to perform an audit. Based on the results of prior audit attempts, any audit would be so qualified that it would be of little value.

Instead, they settled for a package of those accounting procedures they thought could be accomplished, given the limitations imposed and given the absence of records and viable accounting systems. Like someone trying to fix an old car, they ended up taking bits and pieces from various procedures and cobbled them together

into what has now been called "the reconciliation." In fact, it is an ad hoc set of procedures that does not fit into anything found in generally accepted accounting principles. As a result, Arthur Andersen and the BIA have exercised broad discretion to create the processes they used in each area being reconciled.

As a result, over 90 percent of the reconciliation focused solely on whether entries in the general ledger for deposits and disbursements were accurately posted; that is, whether any clerical errors were made in copying information from one document to another. This procedure only covered the period from 1972–92. In addition, some rough procedures were performed to check on deposit times and interest yields and only for the period 1978–92. Nothing was or could be done in regard to the other elements of the reconciliation process because records were missing or never existed in the first place.

The reconciliation covered only the 2,000 tribal accounts. It did not include the 300,000 IIM accounts or the special deposit accounts. After doing some scoping on the IIM records at three reservations, Arthur Andersen advised the BIA that an audit of IIM deposits and investments alone could cost in excess of $200 million to perform. Even then it probably would be of doubtful value in providing the IIM account holders with assurance about the correctness of their account balances. At the present time, the Department has no plans and no funding to do any historical accounting in regard to the IIM accounts.

The bulk of time and money expended by Arthur Andersen on the tribal accounts was devoted to trying to track a portion of the deposits and disbursements. This was called the "basic reconciliation", though actually it was more of a reconstruction of the existing records. It consisted of matching the deposit tickets sent in by the local BIA offices with the entries in the general ledger to see if the dollar amount of the deposit was accurately copied and if it was entered into the proper tribe's account. Arthur Andersen also matched the disbursement tickets to the general ledger. Thus, the process only caught errors by the clerk responsible for transferring the information from one document to the other.

The missing $2.4 billion that has been reported in the media represents the results from this matching process. All told, the general ledger showed there were $17.7 billion in deposits or disbursements to or from tribal accounts during the period 1973 through 1992. The BIA was able to locate and match the disbursement or deposit ticket with the general ledger entry for $15.3 billion. Although there should have been a total of six different documents supporting each general ledger entry, an entry was treated as fully reconciled even if only one of those six documents could be located.

The missing documents that make up this $2.4 billion fall into three categories. The BIA was unable to locate deposit tickets, or any other confirming document, for $1.1 billion in deposit postings. This means that for $1.1 billion that was posted in the general ledger to the accounts of various tribes during this period, the BIA cannot confirm that it was posted to the correct tribe or that the amount posted in the general ledger was the same as the amount on the deposit ticket.

In regard to disbursements, for $845 million that the general ledger shows was withdrawn from the accounts of certain known tribes, the BIA cannot locate the disbursement documents and thus is unable to verify that the money was disbursed to the tribes from whose account it was withdrawn or that the disbursement was properly authorized. The BIA also lacked the documents to support $476 million in transfers between accounts of the same tribe.

For all of these non-reconcilable deposits and disbursements, there is no evidence that the money is missing. On the other hand, there is no evidence that the money is there or that it went to the proper party. The missing documents for all three categories were evenly spread out over the 20 year period. That is, as many documents were missing for the period 1987–92 as for the period 1973–78, showing that it was not simply a case of inability to locate 20 year-old documents.

Under the second major procedure performed by Arthur Andersen, called the "yield analysis", the reconciliation compared the average interest each tribe earned on all its accounts each year with the average earned by all tribes for that year. This all tribal annual average was called the benchmark. If a tribe's average was more than 2 percent below or 5 percent above the benchmark, Arthur Andersen examined the files to try to determine the source of the problem. However, the only problems it searched for and corrected through this examination were posting errors. It made no effort to find out if the lower earning occurred because the money was under invested, such as by leaving it in short-term investments for an excessive period.

The reconciliation recomputed the interest earned on "cash", which was defined as money kept in Treasury before it was invested in government bonds or CDs. Arthur Andersen used 4 percent or 5 percent simple interest from 1978 through 1984.

The interest could not be recomputed for the years 1972 through 1977 because revenue codes were not used by the BIA so it was not possible to determine what interest had been posted. The computation for 1978 through 1994 reported $2.4 million due to the tribes. However, this amount would probably be much larger if the missing years were included and if reasonable interest rates were used rather than 4 percent or 5 percent. This computation also excluded the "interest" accounts from 1978 through 1984 since the BIA did not pay interest on interest accounts.

To determine the potential lost interest because money was left in the form of cash for long periods of time, Arthur Andersen computed proforma interest calculations on cash balances at the BIA's average benchmark rates for 1978 through 1992. The results of this work was not reported for all tribes. However, the amount of this work for two different tribes was $212,000 and $426,000 additional potential interest.

Arthur Andersen also reconciled the investment system, Money Max, to the general ledger, which again, served to catch posting errors only. Posting errors were possible because the various BIA systems were unable to talk to each other, so data had to be transferred manually. This has now been corrected for the tribal accounts but not for the IIM accounts.

The results of the reconciliation of the investment system indicated $8.6 million due to tribes and $1 million due from tribes for a net amount of $7.6 million due to tribes. During the reconciliation effort, five tribes were selected as "pilots" for the purpose of testing and adjusting the process. At several pilot tribes, Arthur Andersen tried to match deposit tickets to lease documents to see if the amount paid was the amount called for in the underlying lease document. However, it found that up to 50 percent of the leases could not be located. When Arthur Andersen tried to perform such a match for all tribes on deposits in excess of $5,000, again 50 percent of the leases could not be located.

The reconciliation determined the number of days receipts lay idle before being deposited. Approximately $273 million took 7 days or longer to be deposited. Over $28 million took over 30 days to deposit. No interest was computed for the delays. If the date of receipt could not be determined, the deposit was considered to be timely.

The final reconciliation report addresses each of these components individually, but never provides a summary that enables a non-accountant to grasp what was and what was not accomplished by this $21 million effort. Nor does it ever total the amounts due to and due from the tribes as a result of the various procedures performed. When totaled by ITMA as best we could, it is believed the report proposes adjustments of $24 million in favor of the tribes, that is $24 million is owed to the tribes by the Federal Government, and $21 million in proposed adjustments in favor of the Government. These two numbers cannot simply be netted because a tribe that has money owed to it may not be one of the tribes that owes money to the Federal Government.

For several of the reconciliation procedures, the report identifies possible exceptions but does not propose actual adjustments in the accounts, such as interest for pro forma and deposit lag time as well as several other possible adjustments, so these amounts are not included in the final tallies. Instead, the report indicates that these data are provided for "informational purposes only." The report does not discuss how the $2.4 billion in missing reconciliation documents should be treated. Nor does it address the implications of the missing leases.

As limited as the reconciliation of deposits and disbursements was, the complete inadequacy of this process becomes even clearer when one considers the full context of the BIA's responsibility for Indian trust assets. For example, the reconciliation did not include an asset management review to determine if an asset such as grazing land had been allowed to be under utilized or overgrazed or whether mature commercial timber was not cut in a timely manner. Nor has there ever been a comprehensive asset review, though various Inspector General reports and Congressional investigations have documented deficiencies in BIA's management of timber and other resources.

Without an accounts receivable system and with so many leases missing, the BIA is unable to tell the trust account holders whether all of the income due on their asset leases has been collected. The BIA collects approximately $250 million per year in asset income from tribal leases and $200 hundred million a year from individual Indian trust assets. We do not know whether this is the right amount, 90 percent of what should be collected, 50 percent or some other percentage.

With regard to the management of the trust funds investment portfolio, the BIA has a duty to obtain the highest return possible within the investment limits established. Here the limits are those established by 25 U.S.C. 161–162a. The reconciliation made no effort to determine if money was under-invested. In the yield analy-

sis, all that Arthur Anderson did if it found that a tribe's yield fell below the benchmark, was check to see if there were any posting errors that were responsible for this. It did not check to see if a tribe was below the benchmark because money was under invested. No audit was performed to determine if investments were lost, held beyond the call dates, or otherwise handled improperly.

There is evidence that the BIA kept money in overnighters, at low interest rates, for inappropriately long periods, when most of the money should have been invested in longer term instruments. The Treasury paid the account holders 4 percent simple interest in overnighters, because the statute so provides. However, there is Federal case law holding that this 4 percent rate set by statute is a floor rather than a ceiling and finding the U.S. liable for the difference between 4 percent and what the market was paying for similar investments at that time. During at least a 7-year period between 1976 and 1985, the average interest earned exceeded 10 percent, so it is likely that overnighters were paying in excess of 4 percent simple interest. In addition to failing to make the money maximally productive, the trustee benefited at the expense of the beneficiary because the U.S. Treasury had the use of the Indian money at rates far below what it was paying to all other lenders. Arthur Andersen did not address this issue because it was outside the scope of its engagement.

The Department of Treasury cannot tell the BIA how much Indian trust money it has. While the deposit tickets documenting lease payments were sent to the BIA general ledger in Albuquerque, the money itself was deposited in the United States Treasury. A reconciliation of the Treasury accounts to the BIA general ledger is necessary to determine if money was deposited. The BIA knew it could not reconcile these accounts prior to 1987 because Treasury had destroyed all of its records prior to 1987. The BIA asked Arthur Andersen to reconcile the period 1987–92. However, Arthur Andersen was able to reconcile only for 1992 because for the past 20 years Treasury had commingled trust money belonging to Indians with Federal appropriated dollars. Arthur Andersen was able to separate trust money from appropriated funds only for that 1 year.

The reconciliation process did not include oil and gas activities. Approximately $200 million a year is collected by MMS from oil and gas and other mineral leases on Indian lands and then transferred to the BIA's OTFM or paid directly to the tribes. No effort was made to determine if the payments reported by the lessees were accurate, whether the amount they paid was consistent with the rate called for in the lease, and whether the money was paid in a timely manner. All that Arthur Andersen did in the oil and gas area was to reconcile the MMS transfer documents with the entries in the BIA general ledger to identify clerical errors.

Mr. Chairman, I have presented all of this detail about the problems with the reconciliation report in the hope that it will help us all to understand that we still have a long way to travel before we can put the problems with the trust funds behind us. Let me also be clear in stating that many significant trust fund management reforms have occurred during the past 5 years. These reforms were possible because of this committee's support.

- The Office of the Trust Fund Management [OTFM] was reorganized, increasing the number of staff and the qualifications of those staff. This development better permits OTFM to perform many of the functions required by the Trust Funds Reform Act.
- An automated trust funds accounting system has been installed for tribal accounts. This allows OTFM to daily reconcile and post activities to tribal accounts.
- Appointment of Mr. Homan as Special Trustee, and the establishment of the Office of the Special Trustee provides the government a qualified trust management resource never before available to the trustee or beneficiaries.
- The 1994 Indian Trust Fund Reform Act provides a statutory infrastructure offering guidelines for future reforms.

The Committee, Tribal Leaders, ITMA and the Special Trustee can take pride in these advances and at the same time feel great frustration in realizing that we are only partially there in terms of a trust management system even approaching those of the private sector.

The next steps in the reform process are not easy. They include:

- Centralized custodial services for securities held in the trust portfolio.
- An accounts receivable system to track, collect and account for funds derived from Indian trust assets.
- Automated accounting system for IIM accounts.

In addition, the Trust Fund Reform Act requires the Secretary to account for the daily and annual balance of all funds held in trust for an Indian tribe or individual Indian trust account holder. That responsibility is still not being fully met. This situation must be corrected as promptly as the resources can be made available to the Secretary for the necessary systems and personnel. The Special Trustee must have the additional resources necessary to accomplish the required management reforms. In particular, his fiscal year 1997 request to begin building the infrastructure required to accomplish the daily collection, investment, accounting, and disbursement of trust funds is critically important to the ultimate success of this effort.

Until these and other reforms are completed, the government's "breach of trust" to Indian account holders continues. In fact, until these reforms are achieved, the Department remains in violation of the provisions of the Trust Funds Reform Act.

The final issue I want to address today is the question of settlements. The Trust Fund Reform Act requires each tribe to either dispute the reconciliation report or to state that they accept the reconciliation report "as full and complete accounting as possible to the earliest possible date". It is possible that some tribes may have enough information to reach a settlement with the government in respect to their account balances; and we encourage those tribes and the government to reach settlements as quickly as possible.

However, it seems certain that many, if not most tribes, with substantial amounts in these accounts, do not have enough information to enter into account balance settlement negotiations. It is critically important that this committee not be mislead into thinking that a settlement is possible for these tribes at this time.

Technical assistance funds are needed to implement the Trust Fund Reform Act provisions which offer tribes the opportunity for self-determination in the management of their trust funds and trust assets. This could well include the management of IIM accounts. ITMA believes that it is in the best interest of the Federal Government to assist those tribes who desire to take over these activities and to relieve the Government of further responsibility. Technical assistance is also necessary if Tribes are going to be able to develop the information which is absent from the reconciliation reports but which must be available to reach fair settlement of tribal account balances. Tribes cannot responsibly exercise their authority to manage these funds unless and until they have thorough and reliable information on the account balances. The BIA's reconciliation report does not provide that information for most, if not all, tribes.

As we move forward with the implementation of the Trust Fund Reform Act, we will need to find an effective way to evaluate the IIM accounts. We know that the Department lacks the funds for an actual audit of those accounts. We also know that an audit may not be feasible for such practical reasons as the absence of essential records. However, it is vitally important that we try to agree upon a process for an evaluation of these accounts and their balances which will be accurate and provide as fair and full an accounting as possible to the account holders. We look forward to working with the committee toward that end.

On behalf of the members of ITMA, I want to thank the committee, and particularly Chairman McCain, for all of your help and assistance over the years. With your continued interest and support, I am confident that we can arrive at a fair and reasonable resolution to the problems which have been created by the mismanagement of the trust funds.

I will be pleased to answer any questions the committee may have.

Prepared Statement of Ivan Makil, President, Salt River Pima Maricopa Indian Community

Mr. Chairman and members of the committee, I appreciate the opportunity to testify on this important issue. My name is Ivan Makil. I am President of the Salt River Pima Maricopa Indian Community. I am also a member of the Special Trustee's Advisory Board and a name plaintiff in the class action lawsuit filed yesterday on behalf of the 300,000 IIM accountant holders against Secretary Babbitt and Assistant Secretary Deer for breach of their obligations as trustees of Indian trust funds.

Last Fall, I agreed to serve as a member of the Special Trustee Advisory Board because of my high hopes that the Trust Fund Reform Act, which this committee spent 2 years working on, would finally correct the largest and longest-running violation of trust law in the history of our country. Last week, I agreed to be a plaintiff in the litigation because I was frustrated by the Department's effort not to follow that act, cover-up the extent of the Department's breach, and stifle the Special Trustee and the Advisory Board.

Below, after documenting these serious charges, I propose some solutions to this problem. They are radical but sound remedies, but we are facing a very serious crisis. It is a crisis not just for Indian people but for all Americans. If the executive branch of the Federal Government is incapable of correcting violations of law by its own Departments, if it takes a Federal court to compel an agency of the United States to cease violating its legal trust responsibility, then the U.S. Government will have lost its moral authority to compel banks, labor unions, securities firms and all other entities that hold money of the American people in trust, to comply with the law.

When I agreed to serve on the Special Trustee's Advisory Committee, I was impressed by Mr. Homan's credentials and experience. After working with him for the past 6 months, I am equally impressed by his commitment to correcting this problem, his honesty and his quick grasp of the steps needed to correct this problem. On November 14, 1995, after being in office for less than 2 months, Mr. Homan published his outline of the strategic plan for bringing the Interior trust systems into compliance with trust standards. The plan is mandated by that the Reform Act and is due by September 1996, 1 year after Mr. Homan took office. Despite the fact that he had no staff and no funding, he brought more clarity and direction to solving the trust fund problem in 2 months than the entire Interior Department had done previously in the 6 years that I have been involved in this issue.

The cost of turning the outline into the detailed strategic plan required by the Reform Act was estimated at $2 million. The Special Trustee asked the Department of the Interior to locate $2 million that could be reprogrammed from somewhere in the Department's $12 billion budget to enable him to complete the plan by the deadline. Despite the fact that the plan was mandated by statute and is the necessary first step to ending the Department's breach of trust, the Secretary's office said he was unable to find any portion of the money needed. As a result, the Special Trustee has not been able to do anything further on the strategic plan since November and he will be at least 1 year late in meeting the deadline set in the Reform Act for his plan. It is ironic that the Department was so concerned about meeting their obligation to report to Congress by May 31 on the reconciliation that his staff repeatedly contacted this committee about the deadline. Yet, they appear to show no concern about the much more important Strategic Plan report deadline, the report that is necessary to end the violations of the law and end the millions of dollars in liability the United States in accruing every month the system remains in violation of the law.

More recently, the Special Trustee asked the Department for $15,000 to hold a meeting of the Advisory Board. Again his request was rejected. Except for our organizational meeting in December, the Advisory Board has had no meetings and will have no meetings for at least the rest of this Fiscal Year. As a result, the Indian community is completely excluded from whatever deliberations are occurring within the Department about trust fund reform.

Yet, during this same period that he could find no money for trust fund reform, the Secretary went on television to announce that he would find $4 million in emergency money to fix the C&O canal and to announce that he would be including $100 million in new money in the fiscal year 97 budget to purchase land in the Everglades. I am not opposed to these environmental activities. But as a public official, I know that I must meet my legal obligations before I chase after the programs that meet my personal and political agenda. Not only has the Department failed to make coming into compliance with the law their highest priority, they have placed it far below other agendas.

In order to insure outside pressures do not force the Department to move trust funds higher up on his priority list, the Secretary and his staff seem to keep the Special Trustee from speaking frankly to his beneficiaries or taking steps to insure the full scope of this problem is fully understood by the account holders and the public.

Those of us on the Advisory Board have suspected for some time that the Department was muzzling the Special Trustee. We were very concerned last month at a meeting of tribal officials, when Mr. Homan responded to question after question by saying, "I have a personal and professional opinion on that issue, but I have been instructed not to say anything on that subject." After 150 years, we finally have someone 2 in the Interior Department who knows something about trust fund management and who is committed to carrying out a trustee's duties, and he is apparently muzzled by the Department.

The third reason I decided to become a plaintiff in the lawsuit is that it became increasingly clear that the Department was trying to cover-up the full extent of the Government's liability to the account holders as a result of Interior's historical mismanagement. The $2.4 billion identified as unreconcilable by Arthur Andersen ap-

pears to be the tip of the iceberg regarding the Federal Government's liability. For example, Arthur Andersen did not address the losses the account holders suffered because the Government never installed an accounts receivable system and therefore cannot tell an account holder if a lessee paid what was due under the lease.

Yet when we sought to raise the issue of the larger liability with Interior, through our attorneys, we were told that the problem is too big and the Government simply does not know how to deal with it. In other words, Interior's position is that Government has made such a mess out of the trust fund records that it should now be let off the hook because it will be too difficult to calculate the losses suffered by the account holders.

When the plaintiffs in the lawsuit approached Price-Waterhouse with the same issue, we were told that the techniques of economic modeling make it feasible to produce valid estimates of the liability that will hold up in court, and can be done at a cost that is only a fraction of what Interior paid Arthur Andersen for looking at the tip of the iceberg. In other words, it was not that the Government could not figure out how to determine its liability, it simply did not want to and made no effort to see how it could be done. In my book, this is called a cover-up. Fortunately, it is not a successful one, because Price-Waterhouse will be presenting the calculations Interior said could not be done in court during the evidentiary portion of our lawsuit.

In sum, the Department has made meeting their legal obligations a low priority, has undermined the Special Trustee, and has tried to cover-up the full extent of the Government's liability. However, to make clear that this is not a personal attack on Secretary Babbitt, I want to emphasize that, with some minor changes in the facts, these same charges could be leveled against former Secretary Lujan when he was in office, former Secretary Andres when he was in office, and every other Interior Secretary for the past 100 years. They all knew they were in breach of trust, they all made, at best, token efforts to correct the breach, and they all worked to bury the problem until they could pass it on to their successor. The message is clear—the Secretary of the Interior, institutionally, is incapable of solving this problem.

I have several proposed solutions, all of which require Congressional action. However, while I believe the Department is incapable of leading the reform effort, I will not recommend that the trust functions be removed from the Interior Department at this time. To the contrary, I strongly oppose any effort to relocate the trust functions at this time. I do so for two reasons. First, in emergency medical care, when a person has many broken bones, they teach you to stabilize the patient before you move them. The trust fund program is broken and it should not be moved until the new systems are put in place (systems that will be needed wherever the trust functions ultimately end up). Otherwise, it will cause enormous dislocation for the thousands of Indians who rely on their trust money for survival. It will also likely destroy much of the evidence needed to finally determine the scope of the losses suffered by the account holders over the years.

Second, moving it now would violate this committee's commitment to self-determination and the policy it has set forth in S. 814. That bill says that the reorganization of the BIA will be put into the hands of the tribes, at the local, area and national levels. That same principle needs to be applied to trust funds management. The future of that program should not be dictated from Washington out of frustration at the problems I discussed above. During the 3 years it will take to stabilize the program, the Special Trustee, the Advisory Board, and others should be tasked with the responsibility of initiating a dialog with the tribal and individual account holders on the future of that program. At the end of the 3 year period, the Indian community should be asked to produce a reorganization plan for that program's future. This is no different from what S. 814 provides for other BIA programs.

To insure the program does get fixed during the 3 year period while its future is being debated by the Indian community, I have three recommendations. They are as follows:

No. 1. That for fiscal year 97, 98 and 99, an amount equal to 1/2 of 1 percent should be taken from every line item in the Interior Department budget and transferred from that line item to a fund to correct the trust systems. This will raise $60 million a year, which will be enough to correct the problems, using the budget prepared by the Special Trustee. The loss of 1/2 of 1 percent of its budget will not seriously hurt any agency in the Department, while it will take the Department out of its present status as the largest trust violator in legal history.

No. 2. Amend the Reform Act to convert the Office of Special Trustee and the Advisory Board into a control board similar to what Congress created when it concluded that the government of the District of Columbia was incapable of reforming itself. The trust fund control board would have the authority to compel action and

to approve all trust related activities by every Interior official. The Department would have no authority over the control board. There is precedent for a part of a Federal agency to not be subject to the authority of the Secretary. For example, the Comptroller of the Currency is not subject to the Treasury Secretary's authority.

No. 3. Amend the Trust Fund Reform Act to give the Special Trustee the independent authority to file suit in Federal Court when necessary to stop breaches of trust or to prevent violations of the Reform Act. This will permit the Trustee to intervene in our lawsuit on the side of the account holders, or at least as an aid to the court. Without it, he will be treated as an employee of the defendant, where he will be kept silent by the Justice Department attorneys, thereby denying the court the valuable insights and expertise he has.

Only by removing the Department from a position of authority over the trust functions, compelling the Department to produce the money to correct the violations, and giving the Special Trustee the independent authority to go to court, will the problems I discussed above—the low priority for trust reform, the apparent muzzling of the Special Trustee and the Department's stonewalling—be effectively corrected.

I am available to assist the Committee to develop these proposals into legislation. Thank you for the opportunity to testify.

PREPARED STATEMENT OF W. RON ALLEN, PRESIDENT, NATIONAL CONGRESS OF AMERICAN INDIANS

Good morning Chairman McCain, Vice Chairman Inouye and members of the Committee. Thank you for the opportunity to submit a statement for the record regarding the management of Indian trust funds and how it affects the lives of Indian people. My name is W. Ron Allen, I am Chairman of the Jamestown S'Klallam Tribe of Washington State and President of the National Congress of American Indians, the oldest, largest, and most representative Indian organization in the Nation. The National Congress of American Indians was established in 1944 in response to termination and assimilation policies promulgated by the Federal Government which proved to be devastating to Indian nations and Indian people throughout the country. NCAI remains dedicated to advocating aggressively on behalf of the interests of our 210 member tribes on a variety of issues including the vital issue of trust funds management.

Pursuant to its recognized trust obligation, the U.S. Government is responsible for the management of tribal assets and funds derived therefrom. These assets and funds are derived from a variety of sources that may include: Land use agreements, the leasing of Indian lands for grazing, timber and mineral development, including individual allotments; royalties associated with the extraction of oil, gas and coal; as well as income from the investment of tribal judgment funds. It is the duty of the United States, through its role as trustee, to maintain records, to deposit receipts, to make sound investments, and to account regularly and accurately to the beneficiaries on the status of these funds.

The Federal Government currently holds approximately $450 million in 300,000 individual trust accounts. Unfortunately, there are reportedly no records for over $100 million of those dollars. In tribal trust accounts overall $2.4 billion still remains unreconciled. The General Accounting Office [GAO], the Inspector General of the Department of the Interior, as well as private accounting firms have all issued various reports detailing how the Federal Government has failed to perform its fiduciary duties and breached its trust responsibility to the beneficiaries of these accounts.

In 1994 Congress passed the Indian Trust Fund Management Reform Act in an attempt to begin to rectify these long-standing problems. The 1994 Act, among other things, created the Office of the Special Trustee for American Indians. It was expected that the Special Trustee would create an accountable system by implementing the reforms necessary for the proper discharge of the Secretary's trust responsibilities to Indian nations and people. However, since that office was created there have been numerous obstacles in resolving the myriad levels of mismanagement.

As stated earlier, $2.4 billion in funds remain unreconciled. In testimony before this committee, the Clinton Administration estimates that reconciliation will cost between $100 and $120 million over 3 years and that without that funding, there will be no increase in the degree of accountability from the Department. According to Mr. Paul Homan, Special Trustee for American Indians, the Bureau of Indian Affairs' systems for trust funds management are defective and outdated. Over the past thirty years the BIA has failed to invest in the modernization of their account systems. In addition, the BIA's investment activity in general leaves many questions

with regard to the potential for funds were they properly invested. Hundreds of millions of dollars in potential interest has been lost because money was left in the form of cash for long periods of time. As a result of this and the widespread perception that the BIA is wasteful and ineffective, many in Congress are hesitant to appropriate money to an entity so riddled with apparent financial mismanagement. The question is, when will the tribes get answers and given the current fiscal climate, when will the tribes get access to what is vitally needed.

For more than 30 years basic operating principles were neglected by the BIA's Office of Trust Fund Management while tribal resources flowed from the reservations. Without an accounts receivable system and with so many leases "missing", the BIA is unable to tell the trust account holders whether all of the income due on their asset leases have been collected. Mineral Management Service [MMS] operations on tribal lands also continued with no system to guarantee that the legal amount due to a tribe or individual on those resources was in fact paid. The pursuit of those assets lost to Indian people as a result of such activities is an issue of vital concern to NCAI and tribes nationwide. Without adequate records and without an adequate remedial plan how can the government expect to reconcile such issues? Until these and other issues are addressed, the Federal Government will continue to violate it trust responsibility as well as the provisions of the Trust Funds Reform Act.

Mr. Chairman, one of the most troubling aspects of this situation is the fact that the Federal Government is not mismanaging its own funds, but the funds of others, some comprising the poorest communities in the nation. With another year of potentially serious budget cuts to Indian programs, our people face even darker budget times ahead. These are not questions of social welfare or government handouts, the funds we speak of are our own: Indian tribes and individual Indians have reposed trust in the United States but that trust has been violated. Our people, many of whom gave their lives in battle for this country, expect this great nation to live up to the agreements we have signed.

Mr. Chairman, this issue is about government mismanagement and unaccountability in its worst form. If this degree of mismanagement and unaccountability were discovered in the private sector there would be many people in Federal prison. Because of the involvement of Indian tribes and "Indian money", the tribes are once again being denied a full measure of justice. We urge the Congress and the Administration to fulfill its fiduciary duty to Indian nations and people and to uphold that responsibility, which includes the proper management of Indian trust funds. It is the joint duty of the Congress and the Administration to resolve this critical problem; and as a nation who proclaims to stand squarely on the principles of freedom, justice and equality this nation must first fulfill its original "Contract with America". Again, thank you Mr. Chairman and all the members of the Committee for the opportunity to submit this statement.

THE SECRETARY OF THE INTERIOR
Washington, DC, May 31, 1996.

Hon. JOHN MCCAIN,
Committee on Indian Affairs,
U.S. Senate Washington, DC.

DEAR SENATOR MCCAIN: Section 304 of the American Indian Trust Fund Management Reform Act of 1994, P.L. 103–412 (25 U.S.C. sec. 4001, et seq.) provides for the submittal of a report by the Secretary of the Interior to the Committee on Natural Resources of the House of Representatives and the Committee on Indian Affairs of the Senate by May 31, 1996, regarding the reconciliation of tribal trust fund accounts.

Tribal trust fund accounts were reconciled for the period of July 1, 1972, through September 30, 1992, by Arthur Andersen LLP using procedures in a contract with the Bureau of Indian Affairs. Commencing in January 1996, each account holder was provided a report on the reconciliation of its accounts along with account statements that show account balances, reconciled transactions, and proposed adjustments. Each account holder was also provided account statements for the period of October 1, 1992, through September 30, 1995, which were reconciled internally by the Office of Trust Funds Management. In addition, each account holder was provided images on CD ROM of the financial documents reconciled by Arthur Andersen LLP. The imaged documents are Arthur Andersen LLP's actual working papers.

Subsequent to the distribution of the reconciliation report and account statements, a national meeting, to which all account holders were invited, was held in Albuquerque, NM, to explain the reconciliation methodology and the report and account statement format, content, and terminology. A series of five [5] regional meet-

ings, of which two [2] have been held, were also scheduled to work directly with each account holder to address questions and issues on its specific report and account statements. At the national and two regional meetings, account holders stated that they want their comments to be included in any report to the Congress.

Through April 30, 1996, seventy seven [77] account holders have responded. Specifically, two [2] account holders have accepted and three [3] account holders have disputed their account balances. The balance of the account holders have requested additional time and/or a meeting. Because all of the scheduled meetings have not been held to receive and discuss account holder issues and comments and since many account holders have not communicated their acceptance or dispute of their account balances, only an interim report on the account holders' attestation can be provided at this time. Accordingly, we submit herein the results of the account holders' communications through April 30, 1996, as an interim report. Once the remaining scheduled meetings have been held and account holders have had an opportunity to communicate their reaction to the balances, a final report on account holder attestations will be submitted to the Congress. The final report will be sent by November 15, 1996.

As required by Section 304, the following report on the reconciliation of Tribal trust fund accounts includes:

No. 1. A description of the methodology in reconciling trust fund accounts.

No. 2. Information on attestations by each account holder that they accept the balances in the account statements or that they dispute the balances along with the reasons for their dispute.

No. 3. The efforts the Secretary will undertake to resolve the disputes.

METHODOLOGY

The methodology used to reconcile the Tribal trust fund accounts consisted of agreed-upon procedures applied to specific elements, accounts or items of a financial statement. The agreed-upon procedures methodology was followed after alternative methodologies and approaches were considered by the Department of the Interior, the Office of Management and Budget, the General Accounting Office and the Intertribal Monitoring Association. The performance of the work and the reporting of the findings were governed by the Statement on Auditing Standards 35 issued by the Auditing Standards Board, American Institute of Certified Public Accountants. The work performed, however, is not an audit as defined by the American Institute of Certified Public Accountants because all the necessary financial records required to perform an audit could not be located. Consequently, the conclusions that can be drawn from the results can only be related to the records reviewed and cannot be applied to any unreconciled transaction. The specific procedures applied by Arthur Andersen LLP are described in its "Agreed-Upon Procedures and Findings Report of Independent Public Accountants" dated December 31, 1995 [see Enclosure I]. Also, enclosed is a copy of a "Sample" report submitted to each account holder which demonstrates the report format, detailed description of the reconciliation methodology and the terminology used [see Enclosure II].

ATTESTATION

Distribution of the agreed-upon procedures report and account statements to account holders commenced in January 1996. The report and account statements were sent to 280 account holders [see Enclosure III]. The whereabouts of nine [9] account holders were unknown and distribution could not be made. Also, account statements were not sent to individual Indians who received a per capita distribution of tribal trust funds.

To assist account holders in making an informed decision on the Agreed-Upon Procedures and Findings Report and account statements, account holders were invited to send representatives to a national meeting held February 14 and 15, 1996, in Albuquerque, NM. At this meeting, the Office of the Special Trustee for American Indians and Arthur Andersen LLP discussed the methodology and findings resulting from applying the agreed-upon procedures and described in detail the format, content and terminology of the report and account statements. A demonstration on the use and content of the CD ROM was also provided. A listing of the account holders that attended this meeting is presented in Enclosure IV.

In addition to the national meeting, a series of five regional meetings were scheduled throughout the country to provide account holders with individual consultation on their report and account statements. The first two [2] regional meetings have been completed and a list of the account holders that attended each meeting is contained in Enclosure V. None of the account holders attending these meetings accepted or disputed their account balances. The regional meetings schedule is as follows:

March 19–22, 1996 Sacramento, CA.

April 9–12, 1996 Portland, OR.
June 3–7, 1996 Tulsa, OK.
June 18–21, 1996 Billings, MT.
July 16–19, 1996 Albuquerque, NM

In addition to the regional meetings, final exit conferences were held with four [4] of the five [5] tribes that participated in the Five Tribes Pilot to discuss their individual report findings and account statements. The Five Tribes Pilot project involved the Hopi, Yakama, Flathead, Fort Berthold, and Fort Peck Tribes and had two components. First, it used available records to reconcile the accounts of those tribes on an expedited basis. Second, staff worked onsite to compare the terms of leases with the actual amount of cash collected. The Hopi representative only sought clarification of the tribe's report, statements, and the settlement process. The tribe has not communicated a decision as to acceptance or dispute of their account balances. At the meeting with the Yakama Tribal representatives, we received a resolution from the Yakama Tribal Council that set forth measures to meet the local needs and priorities of the tribe but did not directly address the account balance issue. A copy of the resolution is provided as Enclosure VI. The Flathead Tribe advised by a formal statement [see Enclosure VII] that they did not accept the account balances and requested meetings to attempt a negotiated settlement. The Fort Peck Tribe maintained their position that they would accept only a full accounting of their trust assets and that the reconciliation project was not sufficient A final exit conference with the Fort Berthold Tribe is pending. The full text of the response of Assiniboine and Sioux Tribes of the Fort Peck Reservation is enclosed as Enclosure VIII.

Through April 30, 1996, 28 percent of the account holders that were provided a report and account statements have communicated with us concerning their account balances. Included with each account holder's individual report and account statements was an "Acknowledgment" form [see Enclosure IX] for the convenience of the account holder to communicate its acceptance or dispute of its account balances. Through April 30, 1996, 77 of the 280 account holders that were sent a report and account statements have responded [see Enclosure X] by use of the acknowledgment form or other formal written communication. Specifically, two [2] account holders have accepted [see Enclosure XI] and three [3] account holders have disputed their account balances [see Enclosures VI, VII and XII].

Three [3] of the 77 account holders only requested a meeting to discuss their specific questions or concerns regarding the report and account statements, but did not request additional time. Sixty-nine [69] responded that they required additional time to review the reports and made no response as to acceptance or dispute of the account balances. Thirty [30] of this latter category also requested an individual meeting to discuss their report and statements. The purpose of the regional meetings is to accommodate the account holders wishing individual meetings.

DISPUTE RESOLUTION

Subsection 3 of Section 304 ofthe Act requires "a statement by the Secretary with regard to each account balance disputed by the account holder outlining efforts the Secretary will undertake to resolve the dispute." Through April 30, 1996, three [3] ofthe 280 account holders have disputed the balance of their accounts. Until we complete our regional meetings and the tribes have had an opportunity to analyze the reports and documentation they have been provided, the Department will not know how many tribes will dispute the balance of their accounts. At that time, the Department will be in a position to propose a mechanism to resolve any such disputes.

Sincerely,

BRUCE BABBITT, *Secretary*.

RESPONSES OF EDWARD B. COHEN TO THE SUPPLEMENTAL QUESTIONS OF THE SENATE COMMITTEE ON INDIAN AFFAIRS ON THE JUNE 11 OVERSIGHT HEARING ON INDIAN TRUST FUNDS MANAGEMENT

Question 1: Does the Department contend that its recent reconciliation report provides each tribe with sufficient information to determine whether the Department has honored or breached its trust obligations concerning these tribal funds?

If your answer is yes, then explain how you have come to that conclusion when the reconciliation report is silent on several hundred billion dollars worth of investment transactions and on tribal funds from oil and gas receipts through Interior's Minerals Management Service?

Answer: The question of whether the Department has breached its trust obligations to any particular tribe with regard to its management of tribal trust funds is a complex inquiry, both legally and factually, and the reconciliation report alone cannot serve as the basis for answering that question.

As you know, the tribal trust fund reconciliation is limited to tribal trust fund transactions for the period July 1972 through September 1992. The scope of the reconciliation was initially examined in Phase I of the BIA's contract with Arthur Andersen, which disclosed that all supporting documents could not be located. As a consequence, it was resolved that an audit would not produce meaningful results. In view of this, the Department of the Interior, in consultation with the Office of Management and Budget [OMB] and the Intertribal Monitoring Association [ITMA], considered alternative methodologies and approaches with the goal of producing as accurate an accounting as practicable. Pursuant to that effort, the Arthur Andersen contract was modified to incorporate the agreed-upon procedures methodology. It was acknowledged by all parties involved that this methodology did not constitute an audit in accordance with generally accepted auditing standards, but nevertheless, it was considered the best alternative to use to reconcile the tribal trust fund accounts back to July 1972.

In addition, after the reconciliation had commenced, deadlines established by Congress in the American Indian Trust Fund Management Reform Act, as well as funding reductions, made it impossible to commence or complete all procedures that were planned to be included in the reconciliation. The reconciliation report, which was provided to the Committee along with the Secretary's report on May 31, describes in detail the procedures that were used in, and the results of, the reconciliation.

Of the $17.7 billion in tribal trust fund non-investment transactions that were encompassed in this effort, $15.3 billion were reconciled and $2.4 billion could not be reconciled because documents to verify or support the transactions could not be located. With regard to the reconciled transactions, a relatively small rate of error was found. The Department will make recommendations to Congress on how those errors should be remedied. With regard to the unreconciled transactions, the report does not provide a basis for determining whether and to what extent a particular tribe may, in fact, have suffered a loss.

Once the Department completes its meetings with all tribes, it will ask those tribes whether they accept or dispute the balances in their accounts as determined by the reconciliation process. Once these responses have been received, the Department will be in a better position to evaluate how disputes should be resolved.

Question 2: What is the Interior Department's view of GAO's settlement process proposal?

Answer: The Department believes that GAO is on the right track in proposing a settlement process that envisions something other than the traditional litigation approach. However, we believe that the GAO's settlement process proposal would be as cumbersome and expensive as litigation. For example, the GAO's proposal would require that a great deal of resources and funding be expended on non-binding mediated settlement negotiations. This procedure would then be followed by an even more resource-intensive binding arbitration process in which the limits of discovery are not defined. These resource concerns are exacerbated by the lack of procedural requirements for the arbitration proceedings, which raises issues of uniformity and fairness as well.

Given the shortcomings of the GAO proposal, and the fact that trust fund litigation is usually extremely costly and inefficient for all parties involved, the Department generally supports the concept of a legislative settlement. Most account holders have not yet communicated their acceptance or dispute of their account balances and we do not know the nature or scope of tribal reaction to the account balances. Once the attestations are submitted, the details of a legislative settlement approach will be developed. Departmental consideration of various legislative settlement options is ongoing.

Question 3: Some tribal representatives have informed the Committee they believe the Interior Department and the Department of the Treasury have destroyed records relating to the Individual Indian Money [IIM] accounts. Please respond to this allegation, and what assurances can you give the Committee that all existing Interior and Treasury records relating to the IIM accounts are being preserved?

Answer: It is our understanding that some records relating to trust fund accounts have been destroyed in two circumstances of which we are aware. Documents sent to Federal record centers were destroyed pursuant to the document retention policies followed by the Federal record centers. In other cases, documents were destroyed or rendered unusable as the result of storage in BIA warehouses for which there was insufficient funding to maintain adequate storage conditions. In addition,

we recently were informed that documents may have been destroyed in one of the BIA Area Offices. The allegation has been referred to the Department's Inspector General for investigation. As there is currently litigation pending pertaining to the IIM accounts, all relevant Departmental personnel are being instructed to preserve all documents relating to the IIM accounts.

Although we have been unable to ascertain precisely what Treasury's document retention policies are with respect to trust fund documents, it appears from our recent work on the tribal trust fund reconciliation project that some Treasury records dated prior to 1989 were destroyed pursuant to such policies.

United States Senate
Committee on Indian Affairs
Oversight Hearings on Indian Trust Funds Management
by the Department of the Interior

Testimony of Paul M. Homan
Special Trustee for American Indians
June 11, 1996

Thank you for the opportunity to present testimony on Indian Trust Funds Management. The hearings are focusing on the reconciliation report of the Secretary of the Interior, what it may take to resolve claims arising from past trust management practices, an interim report by the Special Trustee and what it may take to ensure sound trust management in the future. Each of these focal points is discussed in turn.

The Reconciliation Project

Let me begin by explaining how the reconciliation project came about. Although I was not present when the effort began, it is instructive to understand what brought us to the point where we are at today.

Beginning in 1987, the Congress began directing the Bureau of Indian Affairs to audit and reconcile Indian individual and tribal accounts. Language included in a FY 1987 Supplemental Appropriations Act prevented the outsourcing of trust fund services to a commercial bank (which was BIA's management initiative at that time) until the funds had been audited and reconciled and the tribes or individuals had been provided with an accounting of such funds. The Bureau of Indian Affairs previously had made two unsuccessful attempts to transfer portions of the trust fund operation to major private financial institutions.

Pursuant to these directives, BIA commenced its reconciliation project in 1990. In the fall of 1990, an ad hoc Tribal advisory group worked in conjunction with the General Accounting Office (GAO) and the Department's Inspector General to develop a request for proposal for the reconciliation contract. In May 1991, the contract was awarded to a national accounting firm, Arthur Andersen, L.L.P. The ad hoc group constituted itself as the Intertribal Monitoring Association (ITMA).

The results of Phase I of the contract disclosed that all supporting documents could not be located, but to the extent they could be located, they

could be examined. Because some records could not be located, it was resolved that an audit would not produce meaningful results.

In view of this, the Department of the Interior, in consultation with the Office of Management and Budget (OMB) and ITMA, considered alternative methodologies and approaches with the goal of producing as accurate an accounting as practicable. As a result, the BIA modified the Arthur Andersen contract to incorporate the agreed-upon procedures methodology, which does not constitute an audit in accordance with generally accepted auditing standards, but was used to reconcile the Tribal trust fund accounts back to 1973. The reconciliation did not address IIM accounts because it was determined that a similar reconciliation effort for IIM accounts would cost somewhere in the range of $108 to $281 million.

While the BIA reconciliation efforts were ongoing, in 1994, Congress passed the *American Indian Trust Fund Management Reform Act*, 25 U.S.C. 4001-4061, which established the Office of Special Trustee. The statute also requires that the Secretary transmit to Congress by May 31, 1996, a report that describes the methodology and results of the trust fund reconciliation process, includes Tribal attestations as to disputed account balances, and outlines efforts the Secretary will undertake to resolve such disputes.

Because of the due dates established in the Reform Act and because of funding reductions, the Bureau ended reconciliation efforts in December, 1995. As a result, several planned procedures were not completed or not commenced.

<u>Summary of Findings</u>

BIA examined $17.7 billion of tribal trust fund non-investment transactions for the twenty-year period from July 1972 through September 1992. A total of 86 percent or $15.3 billion of those transactions were reconciled. For the $15.3 billion in reconciled transactions, there was an error rate of .03%. In most cases, the errors consisted of mispostings within the accounts held by a particular Tribe. That is, either the wrong amount was posted to a particular account, an amount was posted to the wrong account of a particular Tribe, or was posted to the wrong Tribe.

The press has reported that the reconciliation found that $2.4 billion of

Indian trust funds cannot be accounted for by the Bureau of Indian Affairs. These conclusions are misleading.

The $2.4 billion figure represents the dollar value of the 14 percent of transactions examined for which BIA could not locate the supporting financial source documents. In other words, there are $2.4 billion of "unreconciled" transactions: transactions that are recorded in the general ledger and posted to tribal accounts but for which back-up documentation to support the general ledger entries is lacking. It may be that additional documents could be found to support the general ledger entries. However, additional searching was precluded by the time and funding constraints imposed on the reconciliation. In many cases documents were unavailable because they were destroyed pursuant to the document retention policies followed by the Federal Records Centers where the documents were stored, or were in unusable condition as the result of storage in BIA warehouses for which there was insufficient funding to maintain adequate storage conditions.

The $2.4 billion represents 13 percent or 32,901 of the total transactions examined in the reconciliation. Each transaction was recorded in a specific tribal account. The transactions can be better understood by breaking them down into receipts, disbursements, or internal transfers. A receipt is a transaction where funds are received and credited (posted) to an account. A transfer is a transaction where funds are transferred from one account to another account of a particular Tribe. A disbursement is a transaction where funds are paid out from an account.

The receipts, which total $1,123,315,969, are funds that were posted to tribal accounts, and were available to the owner of the account for use and were earning interest. Because the supporting financial documents (e.g., collection vouchers from grazing leases, deposit tickets from BIA Area and Agency offices, etc.) are incomplete or unavailable, we cannot verify that the $1.1 billion in receipts was accurately credited to the proper tribal account or to the correct Tribe. The transfers, which total $479,621,822, are transfers between a single Tribe's accounts. These funds are found in tribal accounts. However, we cannot produce all the documentation necessary to state

that the funds were transferred to the proper accounts of a single Tribe.

The disbursements, which have a gross value of $808,636,374 are better understood if they are divided into categories. For example, the total value of the disbursements includes so-called "positive disbursements" of $73.6 million. Positive disbursements are funds that were recredited to a Tribe's account, for example, in cases where the check was not cashed for some reason. In addition, the disbursements include some $39.0 million in attorneys fees from award settlements and $1.5 million in payments of expert witnesses related to award settlements. No attorneys or expert witnesses to date have said that they did not receive their fees. So, although the lack of supporting documents makes it impossible to verify to whom the payment was made and for what purpose, if one excludes the attorney and expert witness fees as the positive disbursements, the actual value of the disbursements is probably more accurately estimated to be $695 million.

Section 304 Report

Section 304 of the *American Indian Trust Fund Management Reform Act of 1994*, P.L. 103-412 (25 U.S.C. §4001, et seq.) (Reform Act of 1994) provides for the submittal of a report by the Secretary of the Interior (Secretary) to the Committee on Natural Resources of the House of Representatives and the Committee on Indian Affairs of the Senate by May 31, 1996, regarding the reconciliation of Tribal trust fund accounts. The Secretary submitted the required report to the Congress on May 31, 1996 (Secretary's Report). Section 304 of the Reform Act of 1994 provides that the Secretary's report shall contain the following:

(1) A description of the methodology in reconciling trust fund accounts;

(2) Information on attestations by each account holder that they accept the balances in the account statements or that they dispute the balances along with the reasons for their dispute; and,

(3) The efforts the Secretary will undertake to resolve the disputes.

As the Secretary's Report indicates, tribal trust fund accounts were reconciled for the period of July 1, 1972 through September 30, 1992, by Arthur Andersen LLP using procedures in a contract with the Bureau of Indian Affairs.

The agreed-upon procedures methodology was followed after alternative methodologies and approaches were considered by the Department of the Interior in consultation with the Office of Management and Budget and the Intertribal Monitoring Association. Commencing in January 1996, each account holder was provided a report on the reconciliation of its accounts along with account statements that show account balances, reconciled transactions, and proposed adjustments. Each account holder was also provided account statements for the period of October 1, 1992 through September 30, 1995, which were reconciled internally by the Office of Trust Funds Management. In addition, each account holder was provided images on CD ROM of the financial documents reconciled by Arthur Andersen LLP. The imaged documents are Arthur Andersen LLP's actual working papers.

Subsequent to the distribution of the reconciliation report and account statements, a national meeting, to which all account holders were invited, was held in Albuquerque, New Mexico, to explain the reconciliation methodology and the report and account statement format, content and terminology. A series of five (5) regional meetings, of which three have been held, were also scheduled to work directly with each account holder to address questions and issues on its specific report and account statements. At the national and three regional meetings, account holders stated that they want their comments to be included in any report to the Congress.

Through April 30, 1996, 77 account holders have responded. Specifically, two account holders have accepted and three account holders have disputed their account balances. The remaining respondents have requested additional time <u>and/or</u> a meeting. Because all of the scheduled meetings have not been held to receive and discuss account holder issues and comments and since many account holders have not communicated their acceptance or dispute of their account balances, only an interim report on the account holder's attestation was provided in the Secretary's report.

Once the remaining scheduled meetings have been held and account holders have had an opportunity to communicate their reaction to the balances, a final report on account holder attestations will be submitted to the Congress. The

final report will be sent by November 15, 1996.

Methodology

The methodology used to reconcile the Tribal trust fund accounts consisted of agreed-upon procedures applied to specific elements, accounts or items of a financial statement. The agreed-upon procedures methodology was followed after alternative methodologies and approaches were considered by the Department of the Interior, the Office of Management and Budget, the General Accounting Office and the Intertribal Monitoring Association. The performance of the work and the reporting of the findings were governed by the Statement on Auditing Standards 35 issued by the Auditing Standards Board, American Institute of Certified Public Accountants. The work performed, however, is not an audit as defined by the American Institute of Certified Public Accountants because all the necessary financial records required to perform an audit could not be located. Consequently, the conclusions that can be drawn from the results can only be related to the records reviewed and cannot be applied to any unreconciled transaction. The specific procedures applied by Arthur Andersen LLP are described in its "Agreed-Upon Procedures and Findings Report of Independent Public Accountants" dated December 31, 1995. That report and a copy of a " Sample" report submitted to each account holder which demonstrates the report format, detailed description of the reconciliation methodology and the terminology used were attachments to the Secretary's Report.

Attestation

Distribution of the agreed-upon procedures report and account statements to account holders commenced in January 1996. The report and account statements were sent to 280 account holders. The whereabouts of nine account holders were unknown and distribution could not be made. Also, account statements were not sent to individual Indians that received a per capita distribution of Tribal trust funds.

To assist account holders in making an informed decision on the Agreed Upon Procedures and Findings Report and account statements, all account holders were invited to send representatives to a national meeting held February 14 and

15, 1996, in Albuquerque, New Mexico. At this meeting, the Office of the Special Trustee for American Indians and Arthur Andersen LLP discussed the methodology and findings resulting from applying the agreed-upon procedures and described in detail the format, content and terminology of the report and account statements. A demonstration on the use and content of the CD ROM was also provided.

In addition to the national meeting, a series of five regional meetings were scheduled throughout the country to provide account holders with individual consultation on their report and account statements. The first three regional meetings have been completed. None of the account holders attending these meetings accepted or disputed their account balances. The regional meetings schedule is as follows:

March 19-22, 1996	Sacramento, California
April 9-12, 1996	Portland, Oregon
June 3-7, 1996	Tulsa, Oklahoma
June 18-21, 1996	Billings, Montana
July 16-19, 1996	Albuquerque, New Mexico

In addition to the regional meetings, final exit conferences were held with four of the five Tribes that participated in the Five Tribes Pilot to discuss their individual report findings and account statements. The Five Tribes Pilot project involved the Hopi, Yakama, Flathead, Fort Berthold and Fort Peck Tribes and had two components. First, it used available records to reconcile the accounts of those Tribes on an expedited basis. Second, staff worked on site to compare the terms of the leases with the actual amount of cash collected. The Hopi representative only sought clarification of the Tribe's report, statements and the settlement process. The Tribe has not communicated a decision as to acceptance or dispute of their account balances. At the meeting with the Yakama Tribal representatives, we received a resolution from the Yakama Tribal Council that set forth measures to meet the local needs and priorities of the Tribe but did not directly address the account balance issue. A copy of the resolution was attached to the Secretary's Report. The Flathead Tribe advised by a formal statement (also attached to the Secretary's

Report) that they did not accept the account balances and requested meetings to attempt a negotiated settlement. The Fort Peck Tribe maintained their position that they would accept only a full accounting of their trust assets and that the reconciliation project was not sufficient. The full statement of the Assiniboine and Sioux Tribes of the Fort Peck Reservation was attached to the Secretary's Report. A final exit conference with the Fort Berthold Tribe is still pending.

Through April 30, 1996, 28 percent of the account holders that were provided a report and account statements have communicated with us concerning their account balances. Included with each account holder's individual report and account statements was an "Acknowledgment" form for the convenience of the account holder to communicate its acceptance or dispute of its account balances. Seventy seven of the 280 account holders that were sent report and account statements have responded by use of the acknowledgment form or other formal written communication. Specifically, two account holders have accepted and three account holders have disputed their account balances. Three of the 77 account holders only requested a meeting to discuss their specific questions or concerns regarding the report and account statements, but did not request additional time. Sixty-nine responded that they required additional time to review the reports and made no response as to acceptance or dispute of the account balances. Thirty of this latter category also requested an individual meeting to discuss their report and statements. The purpose of the regional meetings is to accommodate the account holders wishing individual meetings.

<u>Dispute Resolution</u>

Subsection 3 of Section 304 of the Act requires "a statement by the Secretary with regard to each account balance disputed by the account holder outlining efforts the Secretary will undertake to resolve the dispute." As noted, through April 30, 1996, three account holders have disputed the balance of their accounts. Until the regional meetings are completed and the Tribes have had an opportunity to analyze the reports and documentation they have been provided, the Department will not know how many Tribes will dispute the balance of their accounts. At that time, the Department will be in a position to

propose a mechanism to resolve any such disputes.

Special Trustee's Interim Report and What It May Take to Ensure Sound Trust Management in the Future

In October 1995, the Office of the Special Trustee for American Indians (OST) commenced an assessment of the U. S. Government's trust management policies, procedures, practices and systems as they apply to individual American Indian and American Indian tribal accounts. By February 1996, the OST completed the preliminary assessment and produced a conceptual strategic plan to acquire and institutionalize specified systems. Implementation of this plan will permit and ensure that the U. S. Government establishes appropriate policies and procedures, develops necessary systems and takes the affirmative actions necessary to provide an accurate and timely accounting to American Indian trust beneficiaries. In this manner the proper discharge of the Secretary's trust responsibilities can be accomplished. The Assessment and Phase I of the Strategic Plan are included in a document entitled "Special Trustee for American Indians, Assessment and Strategic Plan Principles, Phase I, February 1996" which is attached to this statement.

The principles are conceptual in nature. The Special Trustee will continue to receive input from ITMA, the Advisory Board, affected bureaus within the Department, Departmental staff offices, tribes and tribal members, and the Office of Management and Budget as the conceptual plan is transformed into a detailed strategic plan as required under the American Indian Trust Fund Management Reform Act.

As noted, in December 1995, the U. S. Department of the Interior's Bureau of Indian Affairs substantially completed a multi-year "Tribal Trust Funds Reconciliation Project" (Reconciliation Project) and issued an "Agreed-Upon Procedures and Findings Report" for the period July 1, 1972 through September 30, 1992. Its major findings are substantially incorporated in the Special Trustee's Assessment.

In August 1995, the U. S. Department of the Interior substantially completed a study of the trust management systems relating to Individual Indian Monies (IIM) accounts and issued a report entitled "IIM Related Systems

Improvement Project Report." The findings of this report are also substantially incorporated in the Special Trustee's Assessment.

The Special Trustee's Assessment, the Reconciliation Project reports, the IIM Related System Improvement Project Report and earlier and later reports issued by the General Accounting Office all confirm that the U. S. Government's trust management systems, policies, procedures and practices coupled with the condition of the trust records and, notably, large numbers of missing documents, are inadequate to allow for:

1. a proper, accurate and timely accounting for trust account balances, collections, disbursements and investments and the maximization of the return on investments.

2. the preparation of accurate and timely reports to trust account holders regarding all collections, disbursements, investments and return on investments.

3. an audit under generally accepted auditing standards.

4. any further reconciliation efforts, since the costs of such efforts would likely substantially exceed the benefits and at the same time would probably yield unsatisfactory and inconclusive results.

While significant improvements have been made over the last several years, the inadequacies of the trust management systems, the condition of the historical records and the U. S. Government's inability to provide an accurate and timely accounting cannot be remedied without the major reforms required by the Reform Act of 1994. To address these issues, the Special Trustee's strategic plan identified nine initiatives or principles designed to rectify the problems and bring trust accounting and management systems up to commercial standards within three years. This, at a minimum, will involve acquiring, automating, updating, integrating, coordinating and consolidating to produce:

1. A trust resource/asset management delivery system.

This will involve obtaining a new trust resource/asset management and delivery system for asset leasing, contracting, lending, buying and selling, together with standardized and/or integrated asset management, credit and operating policies, procedures and practices. The system must be able to tie to and track from land and ownership records.

2. An accounts receivable data and billing system that uses

lease-contract and land and ownership information.
This will involve obtaining a new accounts receivable, billing and collection data system that uses lease-contract and ownership information for trust income verification, reconciliation, billing, payments, collection, accounting, disbursement, audit, asset quality review and compliance purposes.

3. A trust, depository, payments and delivery system for Individual Indian Money (IIM) accounts.
This will entail purchasing a trust, depository, payments and other financial services accounting and statement system and a delivery system to more efficiently provide current financial services and to facilitate new and improved financial services to individual Indians and Tribes.

4. A land records and title recordation and certification system.
This will involve acquiring a new land records and title recordation and certification system, capable of instantaneous linkage with the trust resource asset management, accounts receivable and trust accounting systems.

5. A general ledger and general accounting system.
This will involve obtaining or modifying a general ledger and general accounting system to accommodate all present and planned systems and accounting improvements.

6. A technology services center dedicated to trust resource and funds management.
This will involve obtaining a centralized technology services center dedicated to trust resources, trust funds and land ownership and records management processes.

7. A national archives and records center.

This will involve obtaining and centralizing a modern national archives and records center for trust resource, asset and funds record storage and retrieval.

8. A risk management and control system.
This will entail obtaining a risk management and control system that will provide for adequate operational audits, credit and asset quality audits, compliance reviews, independent asset appraisals and liaison with outside, independent auditors.

9. An independent institutional structure.
This will involve consolidating trust resource, trust funds and land ownership and records management processes into a single, independent institutional unit with its own management structure to accommodate the restructuring and reorganization contemplated by Phase I of the strategic plan. The unit should be organized by function and dedicated exclusively to trust management. The unit should have agency or bureau status within the Department of the Interior or elsewhere.

The conceptual work on the strategic plan is completed. An independent contractor was hired for the purpose of determining approximate costs associated with the development of the comprehensive systems overhaul just mentioned. Out of an abundance of caution, however, a requirements analysis, user needs survey and inventory must be completed before cost estimates can be completely validated and the comprehensive strategic plan completed.

The next step is therefore a requirements analysis, user needs assessment and a comprehensive inventory of existing skills, hardware and software, related network support and facilities requirements, all of which will lead to a technical requirements report for RFP purposes and confirm or revise the cost data contained in the conceptual strategic plan. This will require the use of an outside contractor. The 1997 President's budget request includes $1 million to conduct the analyses.

Once the analyses are completed (expected to take 90 days from funding date) and once the staff of the OST is hired, the remaining elements necessary

to produce the comprehensive strategic plan required by the Reform Act of 1994 can be completed within 90 days or by March 31, 1997, if the President's budget request for FY 1997 is approved.

The total FY 1997 request for OST is $36.3 million, a $20 million increase over the 1996 conference level of $16.3 million. The request includes $13.6 million to begin implementation of the strategic plan. The funds will be used primarily to upgrade and establish a new IIM accounting system, which is long overdue. The 1997 budget requests no-year funding to allow adjustments resulting from re-estimates or delays in plan implementation. However, it should be noted that if funding for the strategic plan is delayed, the reform effort will be delayed.

The $20 million requested increase in OST's budget for FY 1997 also reflects the high priority the Administration and the Secretary place on Indian Trust Asset Reform efforts. Improvement efforts are critically needed to ensure the Federal Government meets its fiduciary obligations to Indian Tribes and individual American Indians. While the Federal Government's trust responsibility is unique, systems, policies, practices and procedures of commercial trust operations can be applied to ensure that the Federal Government better fulfills its fiduciary obligations. Beginning in 1997, the evolution of trust system reforms will be at a point where increased resources can be prudently expended.

In closing, I would like to emphasize that "resolving the past" presents a difficult challenge to the Administration, the Congress, and individual Indians and tribes. The ending of the tribal reconciliation process represents only the beginning of an effort to resolve problems with the U.S. Government's past trust fund management practices. The problems in trust fund management have long been recognized by GAO, the Department's Inspector General, and others in Congress. This Administration is committed to solving these longstanding problems and has made significant progress in strengthening trust funds operations, in conducting the massive reconciliation effort we are reporting on today, and in taking the steps necessary to ensure the highest level of fiduciary and investment standards are in place in the management of these funds. Future reforms will continue in earnest under the comprehensive strategic plan required by the American Indian Trust Fund Management Reform

Act, provided that adequate resources are appropriated by Congress.

Enactment of the President's 1997 Budget request would represent a substantial step to ensuring that Indian trust reform efforts are implemented in a manner that ensures the fiduciary responsibilities of the Federal government are met. However, as you may be aware, the House Appropriations Subcommittee on Interior and Related Agencies made its recommendations on the 1997 request of the Office of the Special Trustee last week. The Subcommittee recommended a funding level of $19.1 million for OST for 1997. This is a reduction from the comparable 1996 resource level of $20.4 million and $19 million reduction from the President's Budget request. At the House mark, no funds would be available for OST to progress on research to clear past problems or implement improvement initiatives. Particularly problematic would be the failure to implement improved systems for the management of Individual Indian Money Accounts. Each day this system remains status quo, the Federal government's exposure to claims of mismanagement continues.

While the House provided funding for analyses necessary to complete the comprehensive strategic plan, no additional resources were provided for staffing which is also necessary to complete the strategic plan. At the funding level provided by the House, the strategic plan will not be completed in 1997.

This concludes my statement. I will be happy to answer any questions you may have.

SPECIAL TRUSTEE FOR AMERICAN INDIANS

ASSESSMENT AND STRATEGIC PLAN PRINCIPLES

PHASE I

FEBRUARY 1996

Note: The assessment, opinions and plan contained herein are a work in progress product of the Office of the Special Trustee for American Indians. The product is subject to modification and change before it becomes final and is recommended to the Secretary of the Interior, the Office of Management and Budget and the Congress.

SPECIAL TRUSTEE'S ASSESSMENT:

PRESENT POLICIES, PROCEDURES AND SYSTEMS WILL NOT ALLOW THE BUREAU OF INDIAN AFFAIRS:

1. **PROPERLY TO ACCOUNT FOR AND INVEST, AS WELL AS MAXIMIZE THE RETURN ON INVESTMENT OF ALL TRUST MONIES OF AMERICAN INDIAN INDIVIDUALS AND AMERICAN INDIAN TRIBES.**

2. **TO PREPARE ACCURATE AND TIMELY REPORTS TO ACCOUNT HOLDERS REGARDING ALL COLLECTIONS, DISBURSEMENTS, INVESTMENTS, AND RETURN ON INVESTMENTS RELATED TO THEIR ACCOUNTS.**

AFFIRMATIVE ACTION REQUIRED: PHASE I OF THE STRATEGIC PLAN

I. PHASE I OBJECTIVES AND LEGALLY REQUIRED AFFIRMATIVE ACTIONS

The principal objectives of Phase I of the Strategic Plan are the acquisition and institutionalization of systems which will permit and ensure that the U. S. Government establishes appropriate policies and procedures, develops necessary systems and takes the affirmative actions required which will allow it to meet the objectives and legally required affirmative actions stated below:

1. The American Indian Trust Fund Management Reform Act of 1994 requires certain affirmative actions to be taken and defines, in part, certain of the Secretary's trust responsibilities to include:

    1. Providing adequate systems for accounting for and reporting trust fund balances.

    2. Providing adequate controls over receipts and disbursements.

    3. Providing periodic, timely reconciliations to assure the accuracy of accounts.

    4. Determining accurate cash balances.

    5. Preparing and supplying account holders with periodic statements of their account performance and with balances of their account which shall be available on a daily basis.

    6. Establishing consistent, written policies and procedures for trust fund management and accounting.

    7. Providing adequate staffing, supervision, and training for trust fund management and accounting.

    8. Appropriately managing the natural resources located within the boundaries of Indian reservations and trust lands.

PHASE I OBJECTIVES (Continued)

2. The American Indian Trust Fund Management Reform Act of 1994 requires the Special Trustee for American Indians to ensure that the Bureau of Indian Affairs (BIA) establishes appropriate policies and procedures, and develops necessary systems, that will allow it:

1. properly to account for and invest, as well as maximize the return on the investment of all trust fund monies.

2. to prepare accurate and timely reports to account holders (and others as required) on a periodic basis regarding all collections, disbursements, investments, and return on investments related to their accounts.

3. to establish policies and practices to maintain complete, accurate, and timely data regarding the ownership and lease of Indian lands.

3. The commercial trust standard is embodied in the following principles:

> "A trustee is under a duty to the beneficiaries of the trust to keep clear and accurate accounts."
>
> "If the trustee fails to keep proper accounts, all doubts will be resolved against him and not in his favor."
>
> --A. Scott, Law of Trusts (3rd ed. 1967) Section 172

To meet these objectives and deal with the present and the future, accounting and management systems must be improved and brought up to commercial standards available in the private sector as soon as possible. Only this will permit an accurate and full accounting to American Indian beneficiaries and allow for the proper discharge of the Secretary's trust responsibilities.

II. SPECIFIC ACTIONS REQUIRED

Phase I of the Strategic Plan is designed to bring the trust accounting and management systems up to commercial standards within three years. This, at a minimum, will involve acquiring, automating, updating, integrating, coordinating and consolidating to produce:

1. A trust resource/asset management delivery system.

This will involve obtaining a new trust resource/asset management and delivery system for asset leasing, contracting, lending, buying and selling, together with standardized and/or integrated asset management credit and operating policies, procedures and practices. System must be able to tie to and tract from land and ownership records.

2. An accounts receivable data and billing system that uses lease-contract and land and ownership information.

This will involve obtaining a new accounts receivable, billing and collection data system that uses lease-contract and ownership information for trust income verification, reconciliation, billing, payments, collection, accounting, disbursement, audit, asset quality review and compliance purposes.

3. A trust, depository, payments and delivery system for Individual Indian Money (IIM) accounts.

This will entail purchasing a trust, depository, payments and other financial services accounting and statement system and a delivery system to more efficiently provide current financial services and to facilitate new and improved financial services to individual Indians and tribes.

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SPECIFIC ACTIONS REQUIRED (Continued)

4. A land records and title recordation and certification system.

This will involve acquiring a new land records and title recordation and certification system, capable of instantaneous linkage with the trust resource asset management, accounts receivable and trust accounting systems.

5. A general ledger and general ledger accounting system.

This will involve obtaining or modifying a general ledger and general accounting system to accommodate all present and planned systems and accounting improvements.

6. A technology services center dedicated to trust resource and funds management.

This will involve obtaining a centralized technology services center dedicated to trust resources, trust funds and land ownership and records management processes.

7. A national archives and records center.

This will involve obtaining and centralizing a modern national archives and records center for trust resource, asset and funds record storage and retrieval.

SPECIFIC ACTIONS REQUIRED (Continued)

8. A risk management and control system.

This will entail obtaining a risk management and control system that will provide for adequate operational audits, credit and asset quality audits, compliance reviews, independent asset appraisals and liaison with outside, independent auditors.

9. An independent institutional structure.

This will involve consolidating trust resource, trust funds and land ownership and records management processes into a single, independent institutional unit with its own management structure to accommodate the restructuring and reorganization contemplated by Phase I of the strategic plan. The unit should be organized by function and dedicated exclusively to trust management. The unit should have agency or bureau status within the Department of the Interior or elsewhere.

III. SPECIAL TRUSTEE'S ASSESSMENT DETAILS

The basic problem is that the U. S. Government, using present systems, was, is and will continue to be unable to furnish beneficiary American Indian tribes and individual Indians with an accurate and full accounting of trust funds. The difficulty lies with the historical and current:

1. lack of an effective trust asset, leasing and resource system which can be audited to determine that trust assets are being managed prudently and consistently in the best interest of the beneficiaries.

2. lack of an accounts receivable (billing) system which precludes comparison of general ledger entries to the amounts required under the lease contracts.

3. lack of an effective IIM accounting system for collections, deposits and disbursements which leads to uncertainty over whether the right beneficiary was credited with the correct amount.

4. lack of an effective land records and ownership system which prevents timely credit of income to the appropriate individual Indian or tribal account and precludes audits to determine whether the trust assets are fully utilized and receiving the highest rate of return consistent with trust and prudential standards.

5. lack of an adequate archives and record keeping system which has resulted in a massive loss of lease and contract records and the consequent inability to do acceptable audits and reconcilements.

6. lack of an effective risk management system which prevents prudential audits, compliance reviews and quality ratings and appraisals.

7. lack of an organizational structure organized by function and dedicated exclusively to trust management.

SPECIAL TRUSTEE'S ASSESSMENT DETAILS (Continued)

These weaknesses have resulted in many instances in the historical and current inability to:

1. trace many of the general ledger postings of individual Indian and tribal income to the source document or lease contract such as the lease of oil and gas properties, timber, farm and ranch properties and mining properties. Consequently, the government is unable to prove the source of the money or whether the right account party received credit for the income.

2. compare the money received to the amount required by the lease or contract. In other words, the government cannot prove in many instances that the lessee paid as agreed.

3. determine whether the lease was made based on comparable market returns for the same type property. In other words, the government cannot always prove it maximized the trust income for the leased property.

4. determine whether the trust lands and minerals are leased to their full potential.

5. determine whether the trust assets and resources are being maintained, conserved and preserved.

6. determine whether the proper account party received credit for the proper amount of income derived from trust resources and funds.

SPECIAL TRUSTEE'S ASSESSMENT DETAILS (Continued)

At the core of many of the accounting and reconciliation problems is the lack of source documentation to support the general ledger entries. There is not a complete way to estimate the number of missing documents, leases and contracts, but the BASIC RECONCILIATION effort disclosed the types of problems which prevent a full accounting:

1. There were 32,319 unreconciled transactions which totaled $2.4 billion and which represented cash receipts, disbursement and internal transfer transactions posted to tribal accounts for which the supporting financial source documents were not located:

Unlocated Receipts:	$1.1 billion
Unlocated Disbursements:	$.8 billion
Unlocated Transfers:	$.5 billion
Total	$2.4 billion

2. Some offices of the Bureau of Indian Affairs have in the past sent trust and land leases and records to a federal records center where they are retained under federal records retention rules rather than under trust rules. The result was that many records were destroyed which should not have been destroyed. Some offices of the BIA followed federal retention rules for trust leases and contracts, which normally required retention of less than ten years after the leases or contracts expire. Thus, some records were destroyed which should not have been destroyed.

3. Some documents are missing for other reasons. For example, in one sampling, ten years of timber contracts were found to have been destroyed. Generally, the "Fill the Gap" part of the Reconciliation Effort was significantly curtailed because large numbers of leases and contracts could not be located.

4. There is not a complete system of redundant record keeping. Thus, no back-up exists if a record is destroyed or cannot be located for some other reason.

SPECIAL TRUSTEE'S ASSESSMENT DETAILS (Continued)

There are numerous problems and issues concerning IIM accounting which have been researched, reported on, and discussed in several internal and external reports. Some of these accounting and systems problems for the 387,631 IIM accounts with balances of approximately $450 million have resulted in the following:

1. 12 different non-integrated databases to manage. File structures are obsolete. Data records are outdated and/or inaccurate. Automated systems applications and routines are not consistent and various versions of similar applications are used.

2. 15,599 duplicate accounts. These accounts should be researched and closed under an appropriate set of policies and procedures.

3. 54,192 accounts with $42.1 million for individuals with no address or an incorrect address. The largest of these accounts contains $1,237,664. Policies and procedures must be established on the steps to follow to locate missing persons and what to do if a person cannot be located. These accounts should be researched and placed in dormant status under appropriate policies and procedures if owners cannot be located within a reasonable period of time.

4. The Office of Trust Funds Management is responsible for accounting for monies held in trust for a minor judgment recipient until he/she reaches 18. There are 48,279 such accounts with $159,633,236 in aggregate balances. But 15,912 accounts and $24,065,650 are for individuals over 18 and one of the over 18 accounts contains $422,699. These accounts should be researched and resolved under an appropriate set of policies and procedures.

5. Special Deposit Accounts aggregating $122,641,993 in 21,958 accounts are supposed to be a temporary repository for money until the ownership of the funds can be determined. Yet there are 4,412 with $3,034,692 which have had no activity in the last 18 months. These accounts should be researched and resolved as well under appropriate policies and procedures.

6. The database contains 21,002 accounts with $36,168,336 for deceased individuals. There are 2,453 of these accounts which are coded as being closed estates. However, because of the probate backlog, there are $624,083 which have not been distributed to heirs. This problem should be addressed.

BASIC PROBLEM DETAILS (Continued)

7. There are 283 accounts for individuals in the database which have overdrafts in the amount of $325,640. No overdrafts are authorized. Overdraft prohibitions should be enforced.

8. As of January 5, 1995:

   A. 37% of the IIM accounts had a balance of less than $1.
   B. 60% of the IIM accounts had a balance of less than $10.
   C. 35,000 IIM accounts had no activity during the last eighteen months.

These accounts are expensive to administer and maintain. Policy and legal changes are required to eliminate them, escheat them or otherwise reduce them to levels that can be administered more efficiently and effectively.

9. Ownership of the land and its associated assets is critical to trust asset management and resulting trust income processes. The BIA systems and processes are currently not capable of establishing up-to-date and accurate land title records that are necessary for the lease management processes. In addition, significant backlogs in updating systems for land records revisions, additions and deletions exist. The time lags associated with probate (2-3 year average) exacerbate the problem as well. Even if the records were up-to-date, the Bureau's current Land Records Information System (LRIS) is not integrated with its Lease Management systems. Databases are separate even though they are inter-dependent and they contain redundant information. Finally, there are many instances reported that LRIS was often not available for trust asset management (e.g., leasing), due to hardware or communications problems.

10. Record retention and filing procedures at certain locations throughout the Bureau and for certain periods are not sufficient to document certain activities and account balances.

11. No accounts receivable system to assure that all income due is collected and to assess late fees and interest due. Field collections are not adequately controlled or deposited timely. Unwarranted delays exist between the receipt of money at Minerals Management Service and final distribution to the owners.

SPECIAL TRUSTEE'S ASSESSMENT DETAILS (Continued)

12. Poor internal controls and inconsistent policies and practices exist. The various audit reports that have been conducted on IIM related systems and activities have identified many cases of inconsistent application of policies and procedures. Inconsistency prevents the accumulation and analysis of information within the BIA, making it difficult for the BIA to provide oversight and management, make management decisions, demonstrate accountability and develop confidence and credibility in the trust asset and trust funds management processes. Poor internal controls and inconsistent practices account for over 50% of the thirty consolidated problems identified in the IIM Related System Improvement Project Report of August 1995. According to that Report, this category of problems "pervades every function reviewed". Moreover the Report notes: "The Bureau has developed procedures and policies for a number of the problems and often, guidelines are in place. However, they are either unknown to the staff performing the function, not being followed, or not comprehensive enough to provide the requisite guidance."

13. Many of the BIA's leasing and other resource management actions result in an amount due from the lessee in payment of the benefit received from the leased resource, e.g., grazing fees. Unfortunately, the BIA's systems and processes do not create or record an amount due and they do not create and account for bills or notices. Except for revenues from minerals leases, the collection and follow-up on this trust asset income rests with the individual realty staff in the field. In some cases, BIA staff have developed P. C. software to perform leasing functions and as a by product are able to issue bills for amounts due, others have manual hard copy records that prompt action, but neither of these is general practice across the Bureau. The resulting condition is that it is possible that amounts due are not established, amounts due may be uncollected, or actions against lessees that may be necessary may not be taken. Further, with little opportunity to separate duties at the agency level, adequate internal control over the entire process becomes extremely difficult and costly and is often not possible.

14. The cash account at the U. S. Treasury is not verifiable due in part to inadequate Bureau procedures and also because the U. S. Treasury is not able to provide the Bureau with accurate information regarding cumulative balances.

15. The BIA's organizational alignment causes decision-making and management for IIM and tribal issues to be an intricate and complex coordination process and an ineffective one at times. Responsibilities fall within 16 separate organizations all reporting directly to one entity, who has direct line authority for every other Bureau organization and program. Further, the activities are carried out by over 100 field offices. The BIA's organizational structure prevents in many instances informed and expeditious decisions because of the number of entities involved and the tremendous number and complexity of the decisions their activities generate. That structure also results at times in trust management responsibilities of a higher order not receiving the attention and focus they deserve and/or being traded off against other Bureau priorities of a lower order. The BIA offices must expend significant resources to coordinate with managers, supervisors and staff across the Bureau to obtain cooperation. Coordination and cooperation often breaks down. Further, because the BIA is not organized and managed by function, all too often policies and procedures written for specific trust programs or functions are not universally followed because the staff that perform the activities take their direction from general managers in area or field offices, not the trust program offices.

COST OF PHASE I OF THE STRATEGIC PLAN

(Dollars in Thousands)

	FY 1996	FY 1997	FY 1998	FY 1999	FY 1996-1999	FY 2000	FY 2001	FY 1996-2001
1. Purchase and upgrades of hardware and software for 1,236 new PC workstations and 824 existing workstations	0	7,145	1,949	2,130	11,224	2,040	2,040	15,304
2. Core systems development and related costs	0	6,665	5,078	5,079	16,822	5,117	5,117	27,056
3. End-user administration, general system support and maintenance	0	8,188	6,669	6,670	21,527	6,670	6,669	34,866
4. External professional services	0	3,560	2,060	2,060	7,680	2,060	2,060	11,800
5. Data conversion and imaging	0	5,270	200	200	5,670	200	200	6,070
6. Systems integration and implementation	0	2,500	2,500	0	5,000	0	0	5,000
7. Access by individuals and tribes	0	5,854	0	0	5,854	1,249	1,249	8,352
Sub-Total requirements for four basic trust/accounting systems (Items 1 through 7)	0	39,182	18,456	16,139	73,777	17,336	17,335	108,448

Cost Details of above are contained in a report dated December 7, 1995 by Mathis & Associates

Additional Phase I Costs

(Dollars in Thousands)

	FY 1996	FY 1997	FY 1998	FY 1999	FY 1996-1999	FY 2000	FY 2001	FY 1996-2001
8. Risk Management System*	*	*	*	*	*	*	*	*
9. National Archives Center and System	0	0	11,000	1,000	12,000	1,000	1,000	14,000
10. Upgrades to the general ledger system	0	2,000	0	0	2,000	0	0	2,000
11. Contracting for:								
A. A user needs assessment and a comprehensive inventory of existing skills, hardware and software, related network support and facilities requirements, and a technical report for RFP purposes.	1,000	0	0	0	1,000	0	0	1,000
B. Rewrites of all operating and legal manuals.	0	3,500	250	250	4,000	250	250	4,500
C. A file scrub and data and document check before conversion.	0	2,000	0	0	2,000	0	0	2,000
D. An overall technical strategic plan manager to oversee above and to oversee specific action plans and budgets to implement the strategic plan.	0	1,000	1,000	1,000	3,000	0	0	3,000
12. Advisory Board Funding	400	400	400	400	1,600	400	400	2,400
13. Office of the Special Trustee (Detail previously supplied)	1,600	1,600	1,600	1,600	6,400	1,600	1,600	9,600
Sub-Total (Items 8 through 13)	3,000	10,500	14,250	4,250	32,000	3,250	3,250	38,500
GRAND TOTAL (Items 1 through 13)	3,000	49,682	32,706	20,389	105,777	20,586	20,585	146,948

*Risk Management System is estimated to cost $5 million/year beginning in second year. This, however, is not an incremental cost to present operating levels as the Risk Management System will be staffed and funded from existing resources.

Note: Costs are incremental to current running rates for trust management which will have to continue running parallel for at least two years at current operating levels before cost savings can be achieved as a result of the systems upgrades.

MATHIS
& ASSOCIATES

COPY

December 7, 1995

Mr. Paul Homan
Special Trustee
Office of Trust Fund Management
Department of Interior
Washington, D. C.

Dear Mr. Homan:

Your office recently engaged our organization for the purpose of determining approximate costs associated with the development of a comprehensive automated records system to support the information needs of the Office of Trust Fund Management.

Based on our review of documents and preliminary discussions with the OTFM staff, we understand that your basic needs include a comprehensive master trust beneficiary accounting system with master trust and custody functionality and should also include all the functions related to handling financial assets. We further understand that supplementary systems are necessary to handle real assets such as real estate, oil and gas rights, timber rights, fishing rights, etc.

In order to execute the various analyses required by the task, our own core research and consulting units here at Mathis & Associates have worked intensely over the past month to review information supplied by the OTFM staff and we have been supported in our efforts by a number of external private sector experts. We have explored insights with informed commentators (such as the GAO team that examined and commented on some of the issues raised in their report over a year ago) and we conducted a number of interviews with private sector vendors with specialized products that might be appropriate in the new environment you envision.

In the course of exploring your primary objectives, it has become clear to us that a whole new "information infrastructure" is needed throughout BIA in order to support the services you envision, specifically a "distributed, client-server" environment. This means that every member of OTFM and OTR who handles information -- nearly the entire staff -- will need an up-to-date PC on his/her desktop (a "client" workstation), and that PC should be able to access any database via the wide area network (WAN) and a "server" (a mini-computer that mediates data between the central source and the local work group).

The current major systems that impact your area of responsibility -- LRIS, IRMS/IIM, and OmniTrust -- have been aptly described by those intimately familiar with their limitations as "islands of automation with no ferry service in between." A major benefit of the future system will be to provide the necessary "ferry service" (integration) between the successor sub-systems, so that an entry in one sub-system will result in automatic and consistent update of all related sub-systems, and "next steps" will be taken insofar as possible without human intervention.

But the "client-server" environment you envision will also provide ferry service (connectivity) to and from virtually every desktop at OTFM. In this way, data and functionality are passed to the lowest possible level, so that end users and clients can selectively access and update the data they need on a daily basis. Thus, a secondary benefit of the immediate project will be to provide the long-delayed modernization necessary to attain true "office automation."

We cannot emphasize enough that this shift to client-server environment will be costly in itself; it will change the way work can and should be done in this new environment; and it will challenge individuals' and organizations' ability to adapt. Nevertheless -- with appropriate management skill and sensitivity to end-user needs (both "internal" bureau personnel and "external" Indian clients) -- we are confident that the client-server environment will address deficiencies of the current system, while making possible the improved services and capabilities that you envision.

We have also identified and reviewed industry-embraced forecast models for a client-sever environment and associated land management and trust systems similar to those proposed. In creating the model we developed for your purposes, we have relied heavily on the work of a Stamford, Connecticut-based consulting organization, The Gartner Group, which is well-established in its reputation and service to the electronic industries. Based on their on-going research and the cooperation of over three dozen major American corporations--Compaq Computer, IBM, Hewlett-Packard and Microsoft among them--their research assisted us greatly in creating some of the assumptions upon which our current model has been developed.

Because of the complexity and uniqueness of some aspects of your requirements--most notably the data conversion and systems integration issues--not all private sector modeling elements were appropriate. We have also relied significantly on information provided us by OTFM in instances where private sector norms were not appropriate. And, we have also relied on our own experience to make modifications wherever we believed them to be necessary.

In creating this model, we were necessarily limited by the amount of information currently available to us. In many instances, the data in hand is far from complete and we were, therefore, left to our own devices to suggest what we believe to be reasonable assumptions. For instance, we were unable to get an exact number of external users--either individuals or tribes--who would require access to the system. We have assumed your policy will dictate universal access for approximately 300 tribes and the financial impact of that assumption is reflected in the last item on the spread sheet.

In the weeks ahead, you and your staff will want to thoughtfully consider some of these basic assumptions--such as the number of ultimate end-users who will access the envisioned system and the number of existing work stations that can be modified to meet new requirements--as these statistics form the bedrock of our model. This work should be part of a comprehensive inventory and user needs and requirements study.

Most trust systems generally have an accounts payable and receivable system with full tax accounting at the state and federal level. Thus, the visionary objectives of the Special Trustee--as we understand them--are accommodated today in most master trust systems. For the sake of this model, we have estimated that a comprehensive suite of systems with the master trust and global custody system at its core will cost in the range of $5 million, with all installation and systems integration costs incurred as additional expenses. (This represents, of course, only a small fraction of the overall cost.)

We have also taken note of the fact that as of January 5, 1995, 37% of the IIM accounts had a balance of less than $1.00, while over 60% of the accounts had less than $10. These accounts should be escheated or some way must be found to get them outside the trust account processing cycle. A trust account costs between $40 and $60 to process each month--at a minimum--and the low balances do not justify this. This is also true of the over 60% of accounts with less than $10 in balances. We are aware that some trust departments within banks do not accept balances of less than $100,000. An option may be to move them to a standard deposit account (held in trust.)

We also note that 35,000 accounts had no activity during the last eighteen months and over 51,000 accounts have no instructions or lack a valid address. This points to a significant file maintenance problem and the data needs to be scrubbed before conversation. The cost of doing this activity is substantial and should not be under estimated. Other findings point to a file/data integrity problem that needs to be addressed before the implementation of a new system.

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We understand that at the present time, there are over 377,000 accounts in total – the vast majority of these individual Indian accounts, less than 2,000 tribal accounts – with more than $2.1 Billion in assets. While the number of accounts are high, the asset size is low (overall and per account.) This makes it important to clean up the operations, processes and data. The cost of processing trust accounts in a service bureau may be preferable after the clean-up is completed. But finding such a vendor to do this may not be easy, as many such businesses are reluctant to engage in business with government agencies as they have better opportunities in the private sector. This must be kept in mind as the project progresses.

Creating a cost model for LRIS--OTR's land records and ownership system--has been a particular challenge, given the limited of specialized vendors who build and support such applications. But our research has produced enough information for us to offer some ballpark estimates of the likely costs of implementing a fully-integrated successor system--with state-of-the-art mapping capability--that can be hooked into the client-server environment mentioned previously and deployed down to the agency office level. For purposes of the present cost estimation, we have assumed: (1) an average of four users who will access the new system within each of the 87 agency offices or 348 users; (2) an average of five users within each of the 12 area offices or 60 users; (3) and an additional 11 users at various headquarters locations--for a total of 419 users nationwide.

Our estimates for all costs likely to be incurred during both 3-year and 5-year epochs are detailed on the attached spread sheets. Our explanation for our calculations are reported in an attachment entitled "Legend for Interpreting Office of Trust Fund Management Spreadsheet Detailing Systems Development/Operations Costs." In sum, our estimates for the 3-year epoch is $73,777,292 and our estimate for the 5-year epoch is $108,447,853.

Finally, we emphasize that these estimates do not take into account the various tasks associated with consolidation of all the records currently maintained by the area offices, the agency offices and the federal records system. The Federal Records Archives maintain 18 sites alone--which are different from the BIA locations. To create a cost model for the physical consolidation--as well as the electronic imaging and storage--where physical consolidation is undoubtedly the antecedent work--will require additional investigation and probably should be part of the longer-term strategic planning effort. This project should be tied to specific strategies and practices associated with overall document management--including, but not limited to all imaging activities.

We appreciate the opportunity to support this important work of the Office of Trust Fund Management and will be happy to meet with you and your staff to review our findings.

Sincerely,

Patricia Mathis

Patricia Mathis

MATHIS
& ASSOCIATES

OVERVIEW OF COST

	3-Year	5-Year
1. Purchase and upgrades of hardware and software for 1,236 new PC workstations and 824 existing workstations.	$ 11,223,610	$ 16,303,940
2. Core systems development and related costs.	$ 16,822,054	$ 27,056,192
3. End-user administration, general system support and maintenance.	$ 21,527,188	$ 34,865,441
4. External professional services.	$ 7,680,000	$ 11,800,000
5. Data conversion and imaging.	$ 5,670,000	$ 6,070,000
6. Systems integration and implementation.	$ 5,000,000	$ 6,000,000
7. Access by individuals and tribes.	$ 6,854,440	$ 8,352,280
GRAND TOTAL	$ 73,777,292	$ 108,447,853

LEGEND FOR INTERPRETING OFFICE OF TRUST FUND MANAGEMENT SPREAD SHEET DETAILING SYSTEMS DEVELOPMENT/OPERATION COSTS

A. Existing PC work station hardware: In order to provide universal access, each end-user will need a PC or individual work station at their desk. Absent a recent and reliable inventory of existing hardware that is suitable for this automation project, we can only make generalized assumptions about the quality and usefulness of existing equipment. Our model presumes that approximately 40% of existing hardware can be salvaged or upgraded to meet modern standards. Therefore, 40% of estimated users (2,060) means that there will be 824 surviving work stations.

B. Upgrade. Because of the aging of much this surviving equipment, upgrades will be necessary to provide adequate processing power to support modern applications. Our operative assumption is that approximately $100 will be required each year for each work station. Minimum upgrades will require 100 MHz Pentium capability to support the emerging environment. But anticipated upgrades will routinely involve memory and DASD and may also require network interface cards and, in some instances, processors. Therefore, the cost is 824 X $100 = $82,400.

C. Maintenance. These costs are presumed to be 6% of the total value cost of the work stations. OTFM staff estimate the cost-per-work station to be $2,500 --a reasonable prediction based on current marketplace prices. If 824 surviving work stations are to be maintained, then their total value is estimated to be $2,060,000. (824 work stations x $2,500 each = $2,060,000). Therefore, 6% of $2,060,000 is $123,600.

D. New PC work station hardware. For each end-user whose current hardware is not suitable, new desktop hardware must be acquired. The model presumes that approximately 60% of all internal end-users will require new work station hardware--with an estimated need for 1,236 new stations.

E. New PC work stations. If the cost of each new work station is $2,500, then the cost for a total of 1,236 acquisitions will be $3,090,000 for Year 1.

F. Upgrade. See "B" above for explanation of $100 per work station. Upgrades during Year 1 are routinely offered as suites or warranties. Upgrades at $100 per work station will be required in all years after Year 1.

G. Maintenance. The model presumes 6% of the original purchase price of the PC work station. For newly purchased machines, maintenance is usually not a cost factor for Year 1, since virtually all maintenance is included as warranty during the first year. (There is also a trend among some manufacturers to move to three-year warranties, but this cannot be taken as a given. In any case, extended warranties often result in higher front-end cost.) Therefore, if 1,236 machines require annual maintenance at a cost of 6% of total cost, then annual maintenance will be 6% of 3,090,000 or $185,400.

H. New client PC software. OTFM staff specified Windows for Workgroups software at a unit cost of $35. However, we concur with other experts that while the operating system software is included in the original purchase price, new releases of operating software are common and, at some point, incremental charges will be involved. We believe a more realistic cost estimate should include a $150 upgrade fee by Year 3. Therefore, the cost is estimated to be $43,260 in Years 1 and 2 (based on OTFM's $35 assumption) and $185,400 in Year 3 (based on our $150 upgrade assumption).

I. Work station software upgrade. See comments under "H" above for details regarding assumptions.

J. Office Suite software. Suite software is the standard set of productivity tools--such as word processing, spread sheets and presentation tools. Bundled together, they provide all the basic administrative tools appropriate for most office actions. Sometimes they are offered as part of the hardware acquisition (although incorporated into the purchase price.) Sometimes these "suites" are purchased as a combined software offering and must be loaded into each PC on an individual basis. Present cost for these tools was estimated at $300 per PC work station, which could include deep volume and government discounts. The 1,236 new client PCs will each require a suite at $300 each; therefore 1,236 x $300 = $370,800.

K. Office suite software maintenance and upgrades. We are assuming an upgrade and maintenance cost of 15% of the total cost of the suite software ($370,800). This is equal to $55,620 for each out year.

L. Documentation/Distribution. Each end user needs access to documentation regarding the software available at their work station. Given the size and scope of this network environment, we believe that a full set of shrink-wrapped documentation for each desktop would be cost-prohibitive. Therefore, we assume one full shrink-wrapped set of documentation per site. Costs are estimated to be $300 per agency office site. This is a one-time cost. The number of sites is estimated to be 110. Therefore, 1104 x $300 = $33,000.

M. Host access software. End-users will need to access legacy systems and mainframe platforms--e.g. LRIS and IRMS--during the transitional years. Software costs required to emulate mainframe applications on PC work stations are estimated to be $100 per work station per year. If the total number of end-users is 2,060 at $100 each, then the cost will be $206,000.

N. LAN wiring. Although existing LAN configurations currently support existing PCs, it is reasonable to predict that any new system will require a comprehensive new LAN design. Costs for implementing this design are estimated to be $250 for each work station. More than one wire is usually installed to provide both voice and data transmission to the desktop. A modest installation requiring only Level 5 unshielded twisted-pair cable, or UTP wire, the cost of the wire, wall jack, terminator and labor can range from $100 to $150 per station. This estimation assumes the installer has easy access to all office and cable ducts. Given the remote distribution of BIA facilities and varying age of office facilities, these costs are predicted to more likely range between $250-$300. For the purpose of this exercise, we assumed a cost of $250. Therefore, for 2,060 work stations, the cost is estimated to be $515,000.

O. Hubs/routers. Hubs are required to connect the work station to the server. Routers interconnect servers at the local work group level (local facility or branch) and central location (headquarters). Our assumptions here are based on statistics provided by OTFM: $3,000 for each hub and $2,500 for each router for a total cost of $5,500 for each agency office. If the cost per agency office is $5,500, then the cost for 87 agency offices is $478,500. In order to provide global Office of Trust Management communication, a 64-line two-way Chatterbox (allowing multiple conversations) will be required at $31,000 per unit; and two Cisco 7000 Routers for a total cost of $44,000 ($22,000 each). Thus, the total estimated cost for this element is $478,500 + $31,000 + $44,000=$553,500.

P. Communications. The remote server locations and the central sites must be provided telecommunications links. The most efficient technology is either frame relay or cell relay--both of which require 56-Kbit transmission service. The cost for a single 56-Kbit line is currently commercially priced at different levels by major carriers. Our model presumes $5,000 per year. (We have not factored into this equation whether or not government discounts--such as those possible under post-FTS2000 awards--will be applicable in this environment.) Therefore, if we presume 99 remote sites at a cost of $5,000 each office, the annual cost will be $550,000.

In addition, each agency office will require two voice lines (for outside user inquiries) and one fax line at an estimated cost of $1,500 per line per year. Thus, three telephone lines at $1,500 is $4,500 per year per site. For 87 sites, the total cost of telephone lines is $391,500. The area, regional and headquarters locations are assumed to be equipped with adequate voice and fax capabilities.

The telecommunications traffic at the primary location server sites is substantially higher because these central locations must communicate with a broader audience. Therefore, these sites require a larger bandwidth capacity and share a larger financial burden than the remote sites. Presuming six primary location servers at a cost of $47,000 per year per server for two 1.5 Mbit frame relay lines, then 6 x $47,000 = $282,000.

The combined total for these estimated communications' costs is, therefore: $550,000 + $391,500 + $282,000 = $1,223,500 each year.

Q. Laser printers. Although often overlooked in creating budgets, experts point out that printer costs usually represent approximately 1% of total cost of ownership and can, in fact, exceed the costs of the servers to which they are attached. A useful model presumes that an average of one 8-pages-per-minute laser printer is needed for every eight end-users. Given 2,060 end-users, there will be a companion need for a minimum of 258 laser printers. At an estimated cost of $1,200 for a medium speed printer, 258 printers will cost $309,600.

R. Upgrade/replacement. It is important to remember that printers have to be replaced on a regular basis. If the total cost of the laser printers is $309,600 (see reference "Q" above), and the estimated annual cost to upgrade and replace is presumed to be 10% of the total original purchase price, then the annual cost beginning in Year 2 will be $30,960.

S. Maintenance. Because even new mechanical devices break down and are subject to end-user abuse, printer maintenance is known to be relatively expensive starting in Year 1 and estimated to be 20% of the original purchase price. Therefore, if the total purchase price is $309,600 (see item Q above), then the annual cost beginning in Year 1 is $61,920.

T. Work group server hardware. We anticipate that these servers will be required to provide local data and resource sharing for an entire agency office work group. In addition to laser printers, resources include plotters, DASD (expanded hard-disk storage capacity), and back-up hardware and software. A state-of-the-art local work group server--including the back-up hardware and software--is estimated to cost approximately $5,500. If each agency office were to receive such equipment, then 87 agency offices at $5,500 each would result in a cost of $478,500.

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U. Upgrade. Servers will need to be updated over time. These upgrades will require DASD (hard disk capacity) and expanded memory. Our model presumes that 5% of the original purchase price will be required for upgrades in Years 2 and 3. If the total purchase price is $478,500, then upgrades will cost $23,925 in each of Years 2 and 3.

V. Maintenance. Maintenance on servers follows the same paradigms as those assumed for typical PC maintenance–which is 6% for all years beyond Year 1, which is covered under warranty provisions. Therefore, 6% of $478,500 is $28,710 each Years 2 and 3.

W. Work group server software. We presume the operating software will be either Novell or Windows NT, given the fact that these operating systems are now the common standard. Current 1995 costs are in the $600 per server range. If we presume $1,000 per server and 87 agency sites, then the cost will be $52,200.

X. Upgrade/maintenance. Standard presumptions are that annual upgrade and maintenance costs related to the work group server software will be 15% of the original purchase price. Therefore, if the total cost is $52,200, then 15% will result in an annual cost of $7,830.

Y. Primary location server hardware. Because they must support a larger number of users primary servers are both larger and more expensive. OTFM staff estimate eight servers at a cost of $49,000 each. Therefore, the total cost if $392,000. This allows for some back-up controllers.

Z. Upgrades. Our model presumes a cost of 5% per year for hardware upgrades, primarily for memory and DASD to account for the growth of end-user files and data. Therefore, if the acquisition cost is $392,0000, then 5% is $19,600 each year.

AA. Maintenance. Maintenance costs are calculated to be approximately 6% of the purchase price of $392,000. Therefore, 6% of the purchase price is $23, 520.

BB. Environmental requirements. In order to maintain vital environmental control, certain adaptations must be made to the facility to sustain constant climate conditions. Additional charges are associated with power, chilled water and other cooling and heating elements. While we cannot know exactly what environmental adaptations will be necessary--and conceivably the magnitude could be quite small if existing facilities are already available and adequate. We have nonetheless included this element given the possibility that some structural changes may be necessary to support either new configurations or parallel operations during the transitional phase. Our model assumes the need for only one mainframe at a single location. Based on our limited information, we are assuming $15,000 per year.

CC. Primary server software. Estimates are for fully configured software, not only base operating systems. They include relational database management systems, PC interconnect software, monitors, development tools and wide-area network support. We assume 12% of total hardware costs of $392,000, which is $47,040 per year.

DD. Upgrade. As with all software, this will need to be periodically upgraded. Our estimated costs are based on the standard assumption of 5% of purchase price for Years 2 and 3. Therefore, 5% of $47,040 is $2,352.

EE. Maintenance. Maintenance consists of the service needed to diagnose and fix problems with the primary server software. This can range from telephone support to on-site assistance. This is estimated to be 17% of purchase price ($47,040) for Years 1, 2 and 3. Therefore, the cost is estimated to be $7,997. each year.

FF. Trust Management/Individual Account System. This item encompasses a master trust and beneficiary accounting system. We assume that OTFM's goal is to realize a mutual fund type of system that minimizes transactions and disbursements, so that individual check disbursements would occur only on demand, rather than automatically. Informed banking and trust management experts tell us that since the cost of cutting a check runs around $1.50, it is obviously impractical to disburse checks for ten cents. Automatic monthly check disbursement means that the cost of each account runs closer to $5 per month, as opposed to $2.00 in a transaction-to-demand system. For the purpose of this model, we assume 200,000 individual Indian accounts would ultimately survive after data clean-up at a monthly cost of $2.00 per account. Thus, our formula was derived as: 200,000 (accounts) X $2 per month per account for a total of $4.8 million per year. Customization and training associated with implementing this system is accounted for in line item EEE.

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GG. Lease Management System. The functionality encompasses in this item is the management of royalties received from leases on Indian lands. The combination of systems required to handle this task would address surface and subsurface leases, ownership and chain-of-ownership needs. The costs listed here are derived from conversations with several private sector vendors who specialize in this type of application.

GG.1 Maintenance and Support. This estimate has been derived from interviews we conducted with vendors who provide this service.

HH. Land Management System. The land records and ownership data processing system must process and validate ownership and encumbrance data at the time of data entry. The land records and ownership data processing system must store all processed data as part of the database for direct, on-line access by program users, clients and client data systems. As well, this system must maintain data and data accessibility at the local Land titles and Records Office level. This data, likewise, must be accessible from a central storage facility for backup.

To the greatest degree possible, the land records and the ownership data processing system must not be computer hardware or operating system dependent. The land records and ownership data processing system must also operate in more than one data processing environment. Additionally, the system must provide a standard land title and records application and user interface. And finally, the land records and ownership data processing system must follow all federal open systems and inter-operability requirements.

One leading vendor we interviewed had a land records ownership and mapping software system which would appear to be ideally suited to this environment and, for that reason, we were inclined to accept the basic cost model described by that company. Assuming 4 client work stations at each of 87 agency offices, the project will require software for 348 work stations at a cost of $1,000--resulting in an annual software cost of $348,000. We then assumed 5 clients in each of the area offices (12 X 5 = $60,000) and one client in the 11 remaining sites (11 X$1,000) to reach a total cost of $419,000 for client-related software. The software at the server level is calculated as $10,500 per server. Assuming 8 primary servers--each loaded with this software--we came up with a cost of $84,000 for server-related software. The total application cost is, therefore, $503,000 ($419,000 + $84,000).

HH.1 Maintenance Support and Upgrade. These costs were dervied directly from vendor quotations.

II. Primary server relational databases. Many traditional hardware providers also offer associated software which allows users to link certain information to other data in such a way as to observe the consequences of one change on other possible outcomes. Most likely, it will be necessary to buy at least one relational database management software package for the client/server environment. Research indicates the vendor-derived estimates are around $85,000 for Year 1 only.

JJ. Upgrade/Maintenance. These costs are estimated to be 20% of the total primary location relational database cost ($85,000). Therefore, 20% will result in a cost of $17,000 beyond Year 1. .

KK. Systems management and application development software. Although many vendors provide "suites" of systems management software, no single vendor can currently offer an all-inclusive suite of products to address every requirement envisioned by the OTFM. This means that, at least in the near term, OTFM will need to deal with several vendors and either accept the role of systems integrator or outsource this function entirely. Informed industry commentators point to major marketplace shifts underway in this arena. They caution that cost projections should not be construed as an implication that the technology is available to run on specific platforms, or that it is available to support all key downstream platforms--such as work-group servers and clients. In any case, these conditions forecast dependence on multiple vendors unless the activity is outsourced.

LL. Upgrade/Maintenance. Because current conditions require dependence on multiple vendors, users will likely be forced to replace software as vendors mature and the market becomes redefined. This will likely result in higher costs for software maintenance and upgrades. Thus, we have presumed a 25% increase for maintenance and upgrades of systems and management software, rather than the standard 15% due to the likely need for technology replacement. (The formula is, then: 25% of 352,350 = $88,088).

MM. End-user support labor. These costs vary widely and are difficult to predict, especially given the fact that no comprehensive study of end-user requirements, skills or training assessment has yet been made. For purposes of this model, labor costs include all those individuals throughout the organization who are required to support the end-users as they both adapt to the new technology and employ it on an on-going basis--including those staff necessary to provide "Help Desk" support, emergency maintenance, etc. We have applied the ratio of 1 support staff to every 50 end-users--resulting in a requirement for 41 staff. Thus, if the total number of end-users is 2,060, and the cost for 1 staff year is $70,000 (burdened labor rate), then the annual cost for this support is $2,870,000. (Approximately 41 staff, each of whom will cost $70,000 each year).

NN. Application development labor. This cost component encompasses the time spent by dedicated MIS professionals managing, developing, maintaining and enhancing client/server applications for the affected operations. Although programming costs are installation-dependent and influenced by many factors, various rules-of-thumb are common--based on ratios of number of application developers to number of end users. In private sector studies, these ratios varied between a low of 25-to-1 to more than 2,000-to-1, depending on a range of factors. Available research indicates that the median ratio was about 250-to-1. Because of the complex nature of the OTFM's and OTR's requirements--especially the land-based aspect--we have used a 200-to-1 ratio. Thus, if 2,060 end-users is the assumption, then 2,060 - 200 = 10 dedicated application developers will be needed. Therefore, 10 dedicated application developers at an annual cost of $90,000 each (burdened labor rate), will result in a cost of $900,000.

OO. Primary server site operation labor. Operations labor is the MIS labor necessary to operate and manage these primary server(s). Model costs are presumed to be 1/3 of the total costs of hardware and software associated with the primary servers. Therefore, if the total cost of the primary server site hardware and software is $439,000, then 1/3 of this is $144,883.

PP. Workgroup server operation labor. These costs reflect MIS labor needed to support the workgroup level servers. Using the same formula, if the total cost for the workgroup hardware and software is $530,700, then the workgroup operation labor cost is calculated to be $175,131.

QQ. Administrative support labor. These costs are activities related to acquiring and administering the client/server system. These are the real, but hidden, costs of acquisition and administration associated with individuals outside the mainstream MIS organization. These include costs of purchasing, accounting and the IT organization itself. It also includes the study and acquisition of the hardware, software and external services for the client/server network. It must also include a component for legal support, either as an internal legal department or outside legal counsel that writes, reviews and negotiates contracts for hardware, software and related services. Budgets must also recognize costs for audits and for evaluations of customer satisfaction. We have assumed at least one audit per site during the 3-year period. And finally, new policies and practices must be defined and management and staff time are necessary to create, document and enforce IS policies and practices for the client/server system.

According to private sector surveys, a typical annual labor cost component is about $500 to $700 per work station per year. Thus, if we assume 2,060 work stations and assume a mid-range cost of $600 per station, then the total cost will be $1,236,000 per year.

RR. End-user training. In our experience, this important factor is often minimized or ignored altogether with devastating effects on the ultimate success of any automation program. To hope that any automation will be successful is to plan carefully for a comprehensive education and training program so that everyone who uses this technology will have the skills, knowledge and training necessary to benefit completely from all its functionality. Three components make up end-user education: (1) the cost per student day of educating the end user; (2) the cost per student day of educating the dedicated, professional , end-user support staff; and (3) the cost of educating the application development staff. In this model, we are assuming that the cost per student day for the end-user is $150. Therefore, the cost to train all users for one days is 309,000 and the cost to train all users for 5 days (the minimum level) equals $1,545,000 for Year 1.

For Year 2 and all subsequent out years, we are presuming a need for at least two student days for each end-user. Thus, the annual cost in Years 2 and beyond will be $618,000.

SS. End-user support training. The model presumes there will be 41 staff members required to provide support training. Each member will require specialized training both in Year 1 and in subsequent years in order to deliver support to end-users. Most private sector models assume 18 days of training for each member at a rate of $365 per day. Thus, if 41 staff members cost $365 a day, then the cost for all members per day is $14,965. For 18 days, the total cost is $269,370.

TT. Application development support training. All of the professionals who develop this software must be trained and re-trained on a regular basis. Our model assumes 10 application developers and the cost to train each of them for one day is estimated to be $320. Thirty (30) days of training must be allocated for each developer. Therefore, the cost to train 10 developers for 30 days is $96,000.

UU. External professional services. External professional services from industry consulting groups will be required to provide expertise in particular client/server areas. OTFM must first plan for expertise to support necessary business process re-engineering efforts, so that the critical work of re-defining how business will be conducted is fully integrated into the planning and design of the new automated systems.

Because client/server environments are just now emerging, many organizations do not have all the requisite skills to implement such projects and professional services will be required to augment in-house skills, especially in the early years. The amount of professional services required can vary dramatically, depending on the environment, but a private sector rule-of-thumb assumes costs to be $1,000 per work station or $2,060,000 per year (2,060 users x $1,000). Our initial discussions with industry experts predict that introductory training costs alone in this environment could be enormous. As OTFM moves toward greater self-reliance, this cost can be expected to be reduced in the out years.

It is also important to note that no comprehensive review of end-user requirements has ever been conducted. Before system needs can be translated into actual requirements, a complete review of the needs of both internal and external users must be conducted. This will require site visits to most of the major agency offices and a substantial sampling of external users to ensure that the feature functionality of the envisioned systems will respond to the business needs of both the internal and external users. Such reviews are routinely and most appropriately conducted by unbiased third parties who can bring a fresh look to the situation and who have no particular allegiance to any one solution or to any existing organization. Such an engagement usually requires the services of a team of highly-trained, professional technology analysts working intensely for a period of nine-to-twelve months and costs routinely range from $1,000,000 to $3,000,000 for such an engagement. Despite the cost, this is an absolutely essential component, for without it, the project will be developed without having really understood and documented the actual needs of the users. For this model, we have assumed a mid-range cost of $1,500,000 for Year 1.

Thus, for Year 1 professional costs should be expected to reach $3,560,000 ($1,500,000 + $2,060,000) for Year 1 and $2,060,000 each year thereafter.

VV. End-user supplies and facilities. Other expenses must be incurred in this category. They include such items as paper and toner for printers, media, diskettes, special equipment, mousepads, small files boxes for floppy disks, special furniture, fixtures, stands for paper, heat, light, air conditioning and power necessary to drive the desktop. Professional surveys indicate that the amounts spent for facilities average $150 per work station per year. Thus, for 2,060 users, the annual cost will be $309,000.

WW. Transportation. Costs must be incurred to ship and move PCs and related equipment. Although the initial shipping of new equipment will be considerable during Year 1, equipment will need to be replaced and related supplies will continue to be transported to end-users throughout the cycle of the automation program. Thus, this model assumes a cost of $20 per work station for each year, or $41,200 each year.

XX. Travel. While this is a highly variable cost, it is important to keep in mind that OTFM sites are highly dispersed and the unique requirements of the external user community will almost surely require substantial travel during the initial development period. If each were visited a minimum of 5 days during the first year, then a total of 520 travel days would be required. At an estimated cost of $300 per travel then, then the annual cost would be $156,000. (This estimate is conservative and presumes that both originating and terminating cities for travel would be within the same geographical region. It would be virtually impossible, for instance, to make a three-day round-trip from Washington, D. C. to Billings, Montana for $900!)

DATA CONVERSION ACTIVITIES:

YY. IIM Data conversion. Although OTFM staff estimate this first year cost to be $250,000, based on their formula that presumes 10 people would work 500 hours at a cost of $50 per hour, this estimate presumes that this awesome task could be completed in twelve and a half weeks--a goal we believe to be extraordinarily optimistic. Private sector experts always warn that data conversion costs are routinely under-estimated and always result in shocking over-runs. Given the well-known problems with the current data, we recommend a formula that assumes the task will require closer to 1,000 hours or 25 work weeks. Thus, we estimate this cost to be $500,000 (10 x $50 x 1,000 hours).

ZZ. Lease-related data conversion. Data here consists primarily of the terms of a lease, the land involved and the lessees. It can also include appraisal information, bond and compliance data, modification data, payment information, and remarks. Land descriptions represent the land being leased and relate directly to the ownership file. The IIM special deposit account number, into which collections are made, can be included in this file. The payment data can be maintained by the user, but is not automatically updated by the billing or collection processes. These accounts are not near so troublesome as the IIM files--with problems such as wrong addresses, missing data elements, etc.--therefore we believe that OTFM's estimate of 10 people for 500 hours for a period of $50 per hour is supportable. Therefore, the cost is estimated to be $250,000.

AAA. Ownership data conversion. These data contain land descriptions and the current owners of the land. Ownership is represented by fractional interest in a per tract basis. The owner ID number in this file does not always match the ID number in the people file, or the account number in the IIM file. OTFM staff estimate that the task of reconciling and correcting these inconsistencies will require 20 people working for 680 hours at a cost of $50 per hour. Absent no reason to doubt this, we have incorporated this assumption into the model. Thus, 20 people at $50 per hour for 680 hours is $680,000.

BBB. People data conversion. These data include information about those Indians who are considered to be part of the official enrollment. They also include information about data critical in determining who qualifies for judgement and per capita payments, such as enrollment date, birth date, and blood quantums. Other data includes alias and main names for the individuals. OTFM estimates a need for 10 people working for 680 hours at a rate of $50 per hour. Thus, the conversion costs are estimated to be 10 x 680 x $50 = $340,000.

CCC. LRIS data conversion. The land records information system (LRIS), tracks individual Indian land ownership. It tracks physical ownership rather than monetary ownership and is the equivalent of the county courthouse in mainstream America. Currently, there are no automated links between LRIS and IRMS/IIM, even though they are procedurally interdependent. Also, OTFM staff have voiced complaints that LRIS is often not available for trust asset management due to hardware problems or communications problems or back-logs in land title and beneficial ownership determinations.

These estimates have been among the most difficult to make. The IT staff at BIA report that last year's estimates for this task were projected to range between $1,500,000 and $2,000,000. OTFM's current projection is for $1,000,00 for data conversion for LRIS. However, it is important to bear in mind the tremendous problems inherent in this conversion process. Cleaning up these data files will require data entry of all CUFF records (records that are literally still paper-bound in staff desk drawers in many instances) and will require matching existing information in the database to actual title records, as well as to owner information contained in other data bases. For these reasons, we believe a much larger cost will be incurred and we estimate it to be at least $1,500,000.

DDD. Imaging data conversion. Costs must be incurred in the process of imaging title and ownership documents. These tasks will necessarily be performed by an outside contractor, given the highly specialized requirements of the task. This will involve travelling to all agency and area locations and imaging appropriate title and ownership documents. OTFM estimated the cost to be $1,000,000. Again, we believe this to be a highly conservative estimate given the potential problems associated with addressing the fractionated interest problems and the fact that finding a suitable vendor may not be easy. We therefore believe a more realistic projection to be $2,000,000.

EEE. Systems Integration and Implementation. This item reflects costs associated with integrating OTFM (BIA) diverse software applications, customizing vendor software to meet OTFM unique requirements, and training end-users on specialized software systems--separate and apart from WAN-related products. While difficult to predict in abstract terms--before a full systems requirements study has been concluded--these costs should not be under-estimated. Well-established vendors tell us that the costs could range between $3-$9 million, depending on many factors. For the purposes of this model, we have assumed $6 million--one sixth of which is allocated for support of tribal access. $5 million is reflected in this category and the remaining $1 million is included in Item FFF.

FFF. Access by individuals and tribes. If we assume universal access by all tribes--approximately 300--to OTFM's trust and asset management system, this would constitute a roughly 15% increase in the total number of end-users, assuming that each tribe has only one client work station accessing OTFM's databases. Using this percentage, this would add $5,854,440 over the first 3-year period.

Total number of end-users	2,060
End-user support staff	41
Application development support	10
Total number of Agencies	87
Total number of Area offcies	12
Total Regional/HQ/other	11
Total Site Offices	110

	ITEM	Year 1	Year 2	Year 3	3 YEAR TOTAL
A	No. existing client PC workstations	824			
B	Existing client PC workstations upgrade	$ 82,400	$ 82,400	$ 82,400	$ 247,200
C	Existing client PC workstations maintenance	$ 123,600	$ 123,600	$ 123,600	$ 370,800
	Sub-total	$ 206,000	$ 206,000	$ 206,000	$ 618,000
D	No. new client PC workstations	1,236	$ -	$ -	-
E	New client PC workstation cost	$ 3,090,000	$ -	$ -	$ 3,090,000
F	New client PC workstation upgrade	$ -	$ 123,600	$ 123,600	$ 247,200
G	New client PC workstation maintenance	$ -	$ 185,400	$ 185,400	$ 370,800
	Sub-total	$ 3,090,000	$ 309,000	$ 309,000	$ 3,708,000
H	New Client PC workstation software: WfWG	$ 43,260	$ -	$ -	$ 43,260
I	Workstation software upgrade	$ -	$ -	$ 185,400	$ 185,400
J	Office suite software	$ 370,800	$ -	$ -	$ 370,800
K	Office suite software mntc./upgrades	$ -	$ 55,620	$ 55,620	$ 111,240
L	Documentation/Distribution	$ 33,000	$ -	$ -	$ 33,000
M	Host access software	$ 206,000	$ -	$ -	$ 206,000
	Sub-total	$ 653,060	$ 55,620	$ 241,020	$ 949,700
N	LAN wiring	$ 515,000	$ -	$ -	$ 515,000
O	Hubs/routers	$ 553,500	$ -	$ -	$ 553,500
P	Communications	$ 1,223,500	$ 1,223,500	$ 1,223,500	$ 3,670,500
	Sub-total	$ 2,292,000	$ 1,223,500	$ 1,223,500	$ 4,739,000
Q	Laser printers	$ 309,600	$ -	$ -	$ 309,600
R	Laser printer upgrade/replace	$ -	$ 30,960	$ 30,960	$ 61,920
S	Laser printer maintenance	$ 61,920	$ 61,920	$ 61,920	$ 185,760
	Sub-total	$ 371,520	$ 92,880	$ 92,880	$ 557,280
T	Work group server hardware	$ 478,500		$ -	$ 478,500
U	Work group server upgrade	$ -	$ 23,925	$ 23,925	$ 47,850
V	Work group server maintenance	$ -	$ 28,710	$ 28,710	$ 57,420
	Sub-total	$ 478,500	$ 52,635	$ 52,635	$ 583,770
W	Work group server software	$ 52,200	$ -	$ -	$ 52,200
X	Upgrade/maintenance	$ -	$ 7,830	$ 7,830	$ 15,660
	Sub-total	$ 52,200	$ 7,830	$ 7,830	$ 67,860

	ITEM	Year 1	Year 2	Year 3	3 YEAR TOTAL
Y	Primary server hardware	$ 392,000	$ -	$ -	$ 392,000
Z	Upgrade	$ -	$ 19,600	$ 19,600	$ 39,200
AA	Maintenance	$ -	$ 23,520	$ 23,520	$ 47,040
BB	Environmentals	$ 15,000	$ 15,000	$ 15,000	$ 45,000
	Sub-total	$ 407,000	$ 58,120	$ 58,120	$ 523,240
CC	Primary server software	$ 47,040	$ 47,040	$ 47,040	$ 141,120
DD	Upgrade	$ -	$ 2,352	$ 2,352	$ 4,704
EE	Maintenance	$ 7,997	$ 7,997	$ 7,997	$ 23,990
	Sub-total	$ 55,037	$ 57,389	$ 57,389	$ 169,814
FF	Trust Management/Indv. Acct. System	$ 4,800,000	$ 4,800,000	$ 4,800,000	$ 14,400,000
GG	Lease Management/Accts. Receivable System	$ 900,000	$ 100,000	$ 100,000	$ 1,100,000
GG.1	Maintenance/Support and Upgrades		$ 63,000	$ 63,000	$ 126,000
HH	Land Management System	$ 503,000			$ 503,000
HH.1	Maintenance/Support and Upgrades		$ 50,300	$ 50,300	$ 100,600
	Sub-total	$ 6,203,000	$ 4,963,000	$ 4,963,000	$ 16,129,000
II	Primary server RDB	$ 85,000		$ -	$ 85,000
JJ	Upgrade/maintenance	$ -	$ 17,000	$ 17,000	$ 34,000
KK	Sys. mgmt. and application dev. SW and tools	$ 352,350	$ -	$ -	$ 352,350
LL	Upgrade/maintenance	$ -	$ 88,088	$ 88,088	$ 176,175
	Sub-total	$ 437,350	$ 105,088	$ 105,088	$ 647,525
MM	End-User support labor	$ 2,870,000	$ 2,884,000	$ 2,884,000	$ 8,638,000
NN	Application development labor	$ 900,000	$ 900,000	$ 900,000	$ 2,700,000
	Sub-total	$ 3,770,000	$ 3,784,000	$ 3,784,000	$ 11,338,000
OO	Primary server operation labor	$ 144,883	$ 144,883	$ 144,883	$ 434,650
PP	Work group server operations labor	$ 175,131	$ 175,131	$ 175,131	$ 525,393
	Sub-total	$ 320,014	$ 320,014	$ 320,014	$ 960,043

	ITEM	Year 1	Year 2	Year 3	3 YEAR TOTAL
QQ	Administrative support labor	$ 1,236,000	$ 1,236,000	$ 1,236,000	$ 3,708,000
	Sub-total	$ 1,236,000	$ 1,236,000	$ 1,236,000	$ 3,708,000
RR	End-user training	$ 1,545,000	$ 618,000	$ 618,000	$ 2,781,000
SS	End-user support training	$ 269,370	$ 74,825	$ 74,825	$ 419,020
TT	A/D support training	$ 96,000	$ 16,000	$ 16,000	$ 128,000
	Sub-total	$ 1,910,370	$ 708,825	$ 708,825	$ 3,328,020
UU	External professional services	$ 3,560,000	$ 2,060,000	$ 2,060,000	$ 7,680,000
	Sub-total	$ 3,560,000	$ 2,060,000	$ 2,060,000	$ 7,680,000
VV	End-user supplies/facilities	$ 309,000	$ 309,000	$ 309,000	$ 927,000
WW	Transportation	$ 41,200	$ 41,200	$ 41,200	$ 123,600
XX	Travel	$ 165,000	$ 165,000	$ 165,000	$ 495,000
	Sub-total	$ 515,200	$ 515,200	$ 515,200	$ 1,545,600
	Data Conversion (*assumes conversion is done by contractor*)				
YY	IIM	$ 500,000	$ -	$ -	$ 500,000
ZZ	Lease	$ 250,000	$ -	$ -	$ 250,000
AAA	Ownership	$ 680,000	$ -	$ -	$ 680,000
BBB	People	$ 340,000	$ -	$ -	$ 340,000
CCC	LRIS	$ 1,500,000	$ -	$ -	$ 1,500,000
	Sub-total	$ 3,270,000	$ -	$ -	$ 3,270,000
DDD	Imaging	$ 2,000,000	$ 200,000	$ 200,000	$ 2,400,000
	Sub-total	$ 2,000,000	$ 200,000	$ 200,000	$ 2,400,000
EEE	System Integration/Implementation Costs	$ 2,500,000	$ 2,500,000		$ 5,000,000
	Sub-total	$ 2,500,000	$ 2,500,000	$ -	$ 5,000,000
FFF	Access by Individual Indians and Tribes	$ 5,854,440	$ -	$ -	$ 5,854,440
	Sub-total	$ 5,854,440	$ -	$ -	$ 5,854,440
	GRAND TOTALS	$ 39,181,691	$ 18,455,101	$ 16,140,501	$ 73,777,292

Total number of end-users	2,060
End user support staff	41
Application development support	10
Total number of Agencies	87
Total number of Area offcies	12
Total Regional/HQ/other	11
Total Site Offices	110

	ITEM	Year 1	Year 2	Year 3	Year 4	Year 5	5 YEAR TOTAL
A	No. existing client PC workstations	824					
B	Existing client PC workstations upgrade	$ 82,400	$ 82,400	$ 82,400	$ 82,400	$ 82,400	$ 412,000
C	Existing client PC workstations maintenance	$ 123,600	$ 123,600	$ 123,600	$ 123,600	$ 123,600	$ 618,000
	Sub-total	$ 206,000	$ 206,000	$ 206,000	$ 206,000	$ 206,000	$ 1,030,000
D	No. new client PC workstations	1,236	-	-	-	-	
E	New client PC workstation cost	$ 3,090,000	$ -	$ -	$ -	$ -	$ 3,090,000
F	New client PC workstation upgrade	$ -	$ 123,600	$ 123,600	$ 123,600	$ 123,600	$ 494,400
G	New client PC workstation maintenance	$ -	$ 185,400	$ 185,400	$ 185,400	$ 185,400	$ 741,600
	Sub-total	$ 3,090,000	$ 309,000	$ 309,000	$ 309,000	$ 309,000	$ 4,326,000
H	New Client PC workstation software: WfWG	$ 43,260	$ -	$ -	$ -	$ -	$ 43,260
I	Workstation software upgrade	$ -	$ -	$ 185,400	$ -	$ 185,400	$ 370,800
J	Office suite software	$ 370,800	$ -	$ -	$ -	$ -	$ 370,800
K	Office suite software mntc./upgrades	$ -	$ 55,620	$ 55,620	$ 55,620	$ 55,620	$ 222,480
L	Documentation/Distribution	$ 33,000	$ -	$ -	$ -	$ -	$ 33,000
M	Host access software	$ 206,000	$ -	$ -	$ -	$ -	$ 206,000
	Sub-total	$ 653,060	$ 55,620	$ 241,020	$ 55,620	$ 241,020	$ 1,246,340
N	LAN wiring	$ 515,000	$ -	$ -	$ -	$ -	$ 515,000
O	Hubs/routers	$ 553,500	$ -	$ -	$ -	$ -	$ 553,500
P	Communications	$ 1,223,500	$ 1,223,500	$ 1,223,500	$ 1,223,500	$ 1,223,500	$ 6,117,500
	Sub-total	$ 2,292,000	$ 1,223,500	$ 1,223,500	$ 1,223,500	$ 1,223,500	$ 7,186,000
Q	Laser printers	$ 309,800	$ -	$ -	$ -	$ -	$ 309,600.00
R	Laser printer upgrade/replace	$ -	$ 30,960	$ 30,960	$ 30,960	$ 30,960	$ 123,840
S	Laser printer maintenance	$ 61,920	$ 61,920	$ 61,920	$ 61,920	$ 61,920	$ 309,600
	Sub-total	$ 371,520	$ 92,880	$ 92,880	$ 92,880	$ 92,880	$ 743,040
T	Work group server hardware	$ 478,500					$ 478,500
U	Work group server upgrade	$ -	$ 23,925	$ 23,925	$ 23,925	$ 23,925	$ 95,700
V	Work group server maintenance	$ -	$ 28,710	$ 28,710	$ 28,710	$ 28,710	$ 114,840
	Sub-total	$ 478,500	$ 52,635	$ 52,635	$ 52,635	$ 52,635	$ 689,040
W	Work group server software	$ 52,200	$ -	$ -	$ -	$ -	$ 52,200
X	Upgrade/maintenance	$ -	$ 7,830	$ 7,830	$ 7,830	$ 7,830	$ 31,320
	Sub-total	$ 52,200	$ 7,830	$ 7,830	$ 7,830	$ 7,830	$ 83,520

	ITEM	Year 1	Year 2	Year 3	Year 4	Year 5	5 YEAR TOTAL
Y	Primary server hardware	$ 392,000	$ -	$ -	$ -	$ -	$ 392,000
Z	Upgrade	$ -	$ 19,600	$ 19,600	$ 19,600	$ 19,600	$ 78,400
AA	Maintenance	$ -	$ 23,520	$ 23,520	$ 23,520	$ 23,520	$ 94,080
BB	Environmentals	$ 15,000	$ 15,000	$ 15,000	$ -	$ -	$ 45,000
	Sub-total	**$ 407,000**	**$ 58,120**	**$ 58,120**	**$ 43,120**	**$ 43,120**	**$ 609,480**
CC	Primary server software	$ 47,040	$ 47,040	$ 47,040	$ -	$ -	$ 141,120
DD	Upgrade	$ -	$ 2,352	$ 2,352	$ 2,352	$ 2,352	$ 9,408
EE	Maintenance	$ 7,997	$ 7,997	$ 7,997	$ 7,997	$ 7,997	$ 39,984
	Sub-total	**$ 55,037**	**$ 57,389**	**$ 57,389**	**$ 10,349**	**$ 10,349**	**$ 190,512**
FF	Trust Management/Indv. Acct. Systems	$ 4,800,000	$ 4,800,000	$ 4,800,000	$ 4,800,000	$ 4,800,000	$ 24,000,000
GG	Lease Management Systems	$ 900,000	$ 100,000	$ 100,000	$ 100,000	$ 100,000	$ 1,300,000
GG 1	Maintenance/Support and Upgrades		$ 63,000	$ 63,000	$ 63,000	$ 63,000	$ 252,000
HH	Land Management System	$ 503,000					$ 503,000
HH 1	Maintenance/Support and Upgrades		$ 50,300	$ 50,300	$ 50,300	$ 50,300	$ 201,200
	Sub-total	**$ 6,203,000**	**$ 5,013,300**	**$ 5,013,300**	**$ 5,013,300**	**$ 5,013,300**	**$ 26,256,200**
II	Primary server RDB	$ 85,000	$ -	$ -	$ -	$ -	$ 85,000
JJ	Upgrade/maintenance	$ -	$ 17,000	$ 17,000	$ 17,000	$ 17,000	$ 68,000
KK	Sys. mgmt. and application dev. SW and tools	$ 352,350	$ -	$ -	$ -	$ -	$ 352,350
LL	Upgrade/maintenance	$ -	$ 88,088	$ 88,088	$ 88,088	$ 88,088	$ 352,350
	Sub-total	**$ 437,350**	**$ 105,088**	**$ 105,088**	**$ 105,088**	**$ 105,088**	**$ 857,700**
MM	End-User support labor	$ 2,870,000	$ 2,884,000	$ 2,884,000	$ 2,884,000	$ 2,884,000	$ 14,406,000
NN	Application development labor	$ 900,000	$ 900,000	$ 900,000	$ 900,000	$ 900,000	$ 4,500,000
	Sub-total	**$ 3,770,000**	**$ 3,784,000**	**$ 3,784,000**	**$ 3,784,000**	**$ 3,784,000**	**$ 18,906,000**
OO	Primary server operation labor	$ 144,883	$ 144,883	$ 144,883	$ 144,883	$ 144,883	$ 724,415
PP	Work group server operations labor	$ 175,131	$ 175,131	$ 175,131	$ 175,131	$ 175,131	$ 875,655
	Sub-total	**$ 320,014**	**$ 320,014**	**$ 320,014**	**$ 320,014**	**$ 320,014**	**$ 1,600,071**

	ITEM	Year 1	Year 2	Year 3	Year 4	Year 5	5 YEAR TOTAL
QQ	Administrative support labor	$ 1,236,000	$ 1,236,000	$ 1,236,000	$ 1,236,000	$ 1,236,000	$ 6,180,000
	Sub-total	$ 1,236,000	$ 1,236,000	$ 1,236,000	$ 1,236,000.00	$ 1,236,000.00	$ 6,180,000
RR	End-user training	$ 1,545,000	$ 618,000	$ 618,000	$ 618,000	$ 618,000	$ 4,017,000
SS	End-user support training	$ 269,370	$ 74,825	$ 74,825	$ 74,825	$ 74,825	$ 568,670
TT	A/D support training	$ 96,000	$ 16,000	$ 16,000	$ 16,000	$ 16,000	$ 160,000
	Sub-total	$ 1,910,370	$ 708,826	$ 708,826	$ 708,826	$ 708,826	$ 4,745,670
UU	External professional services	$ 3,560,000	$ 2,060,000	$ 2,060,000	$ 2,060,000	$ 2,060,000	$ 11,800,000
	Sub-total	$ 3,560,000	$ 2,060,000	$ 2,060,000	$ 2,060,000	$ 2,060,000	$ 11,800,000
VV	End-user supplies/facilities	$ 309,000	$ 309,000	$ 309,000	$ 309,000	$ 309,000	$ 1,545,000
WW	Transportation	$ 41,200	$ 41,200	$ 41,200	$ 41,200	$ 41,200	$ 206,000
XX	Travel	$ 165,000	$ 165,000	$ 165,000	$ 165,000	$ 165,000	$ 825,000
	Sub-total	$ 515,200	$ 515,200	$ 515,200	$ 515,200	$ 515,200	$ 2,576,000
	Data Conversion (assumes *conversion is done by contractor*)						
YY	IIM	$ 500,000	$ -	$ -	$ -	$ -	$ 500,000
ZZ	Lease	$ 250,000	$ -	$ -	$ -	$ -	$ 250,000
AAA	Ownership	$ 680,000	$ -	$ -	$ -	$ -	$ 680,000
BBB	People	$ 340,000	$ -	$ -	$ -	$ -	$ 340,000
CCC	LRIS	$ 1,500,000	$ -	$ -	$ -	$ -	$ 1,500,000
	Sub-total	$ 3,270,000	$ -	$ -	$ -	$ -	$ 3,270,000
DDD	Imaging	$ 2,000,000	$ 200,000	$ 200,000	$ 200,000	$ 200,000	$ 2,800,000
	Sub-total	$ 2,000,000	$ 200,000	$ 200,000	$ 200,000	$ 200,000	$ 2,800,000
EEE	System Integration/Implementation Costs	$ 2,500,000	$ 2,500,000	$ -	$ -	$ -	$ 5,000,000
	Sub-total	$ 2,500,000	$ 2,500,000	$ -	$ -	$ -	$ 5,000,000
FFF	Access by Individual Indians and Tribes	$ 8,352,280					$ 8,352,280
	Sub-total	$ 8,352,280	$ -	$ -	$ -	$ -	$ 8,352,280
	GRAND TOTALS	$ 41,879,631	$ 16,505,401	$ 16,190,801	$ 15,943,381	$ 16,128,781	$ 106,447,853

United States General Accounting Office

GAO

Testimony

Before the Committee on Indian Affairs
U.S. Senate

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FINANCIAL MANAGEMENT

Interior's Efforts to Reconcile Indian Trust Fund Accounts and Implement Management Improvements

Statement of Linda M. Calbom
Director, Civil Audits
Accounting and Information Management Division

GAO/T-AIMD-96-104

Mr. Chairman, Mr. Vice Chairman, and Members of the Committee:

We appreciate the opportunity to be here today to discuss our work on the Department of the Interior's management of the Indian trust funds. My statement

-- summarizes our assessment of the results of Interior's efforts to reconcile Indian trust fund accounts,
-- discusses the usefulness of a legislated settlement process for resolving disputes of account balances, and
-- provides information on the status of Interior's trust fund management improvement initiatives which are needed to ensure that the trust fund accounts will be accurate in the future.

In summary, as discussed in our May 1996 report,[1] while Interior has brought its reconciliation project to a close, tribal accounts were not fully reconciled due to missing records and the lack of an audit trail in Interior's automated accounting systems. In addition, the January 1996 report package that Interior provided to each tribe on the reconciliation results did not explain or describe the numerous changes in reconciliation scope and methodologies or the procedures that had been planned but were not performed. Therefore, the limitations of the reconciliation were not evident. Also, due to cost considerations and the potential for missing records, individual Indian trust fund accounts were not included in the reconciliation project.

Tribes have expressed concerns about the scope and results of the reconciliation process. By April 30, 1996, only 2 tribes had accepted their account reconciliation results, 3 tribes had disputed their results, and the remaining 275 tribes had not decided whether to accept or dispute their account balances. If Interior is unable to resolve tribes' concerns, a legislated settlement process could be used to resolve disputes about tribal account balances. Our September 1995 report[2] contained draft legislation outlining a settlement process, which we prepared in response to a request from your Committee and the House Committee on Resources to initiate discussions on options for resolving disputed balances.

While Interior has initiated several management improvement actions over the past 3 years to correct the long-standing problems that gave rise to the concerns over the accuracy of tribal trust fund accounts, the improvements will take several

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[1]Financial Management: BIA's Tribal Trust Fund Account Reconciliation Results (GAO/AIMD-96-63, May 3, 1996).

[2]Indian Trust Fund Settlement Legislation (GAO/AIMD/OGC-95-237R, September 29, 1995).

years to complete. Additionally, the current trust fund management and accounting systems and controls remain inadequate to ensure accurate trust fund accounting and asset management. Unless Interior corrects its long-standing trust fund management, accounting, and control weaknesses, it may be faced with additional costly reconciliations and settlements in the future.

The appointment of the Special Trustee for American Indians was an important step in establishing high-level leadership at Interior for Indian trust fund management. The Office of the Special Trustee was implemented in February 1996. The Special Trustee has recently developed a concept paper which outlines needed trust fund management improvements. This concept paper will need to be expanded to include various options and alternatives and their associated costs and benefits and ultimately developed into a comprehensive strategic plan.

Ultimately, solving Interior's trust fund management problems will require comprehensive planning, management commitment across all Indian trust program offices, and additional resources.

BACKGROUND

Several Interior agencies are responsible for carrying out the Secretary's Indian trust responsibilities. These agencies include the Bureau of Indian Affairs (BIA) and its Office of Trust Responsibilities (OTR), which is responsible for resource management and land and lease ownership information; BIA's 12 Area Offices and 85 Agency Offices; the Bureau of Land Management (BLM) and its lease inspection and enforcement functions; and the Minerals Management Service's (MMS) Royalty Management Program, which collects and accounts for oil and gas royalties on Indian leases.

In addition, an Office of the Special Trustee for American Indians was established by the American Indian Trust Fund Management Reform Act of 1994. This office, implemented by Secretarial Order in February 1996, has oversight responsibility over Indian trust fund and asset management programs in BIA, BLM, and MMS. The Order transferred BIA's Office of Trust Funds Management (OTFM) to the Office of the Special Trustee for American Indians and gave the Special Trustee responsibility for the financial trust services performed at BIA's Area and Agency Offices.

At the end of fiscal year 1995, OTFM reported that Indian trust fund accounts totaled about $2.6 billion, including approximately $2.1 billion for about 1,500 tribal accounts and about $453 million for nearly 390,000 Individual Indian Money (IIM) accounts. The balances in the trust fund accounts have accumulated primarily from payments of claims; oil, gas, and coal royalties; land use agreements; and investment income. Fiscal

year 1995 reported receipts to the trust accounts from these sources totaled about $1.9 billion, and disbursements from the trust accounts to tribes and individual Indians totaled about $1.7 billion.

OTFM uses two primary systems to account for the Indian trust funds--an interim, core general ledger and investment system and BIA's Integrated Resources Management System (IRMS). OTR's realty office uses the Land Records Information System (LRIS) to record official Indian land and beneficial ownership information. BLM maintains a separate system for recording mineral lease and production information and MMS maintains separate royalty accounting and production information systems.

Our assessment of BIA's trust fund reconciliation and reporting to tribes is detailed in our May 1996 report, which covered our efforts to monitor BIA's reconciliation project over the past 5 and one-half years. As you requested, we also assessed Interior's trust fund management improvement initiatives. In order to do this, we contacted the Special Trustee for American Indians, OTFM officials, and OTR's Land Records Officer for information on the status of their management improvement plans and initiatives. We also contacted tribal representatives for their views. We focused on Interior agency actions to address recommendations in our previous reports and testimonies and obtained information on new initiatives.

TRUST FUND RECONCILIATION RESULTS

BIA recently completed its tribal trust fund reconciliation project which involved a massive effort to locate supporting documentation and reconstruct historical trust fund transactions so that account balances could be validated. BIA provided a report package[3] to each tribe on its reconciliation results in January, 1996. Interior's prototype summary reconciliation report to tribes shows that BIA's reconciliation contractor verified 218,531 of tribes' noninvestment receipt and disbursement transactions that were recorded in the trust fund general ledger. However, despite over 5 years of effort and about $21 million in contracting fees, a total of $2.4 billion for 32,901 receipt and disbursement transactions recorded in the general ledger could not be traced to supporting documentation

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[3]The report package presented the results of the reconciliation procedures performed by BIA's contractor for fiscal years 1973 through 1992, and BIA's reconciliations for fiscal years 1993 through 1995. It included unreconciled account statements and a schedule of proposed adjustments for each of the years covered by the reconciliation, and a transmittal letter which described the information provided and BIA's plans to meet with tribes to discuss the reconciliation results.

due to missing records.

In addition, BIA's reconciliation report package did not disclose known limitations in the scope and methodology used for the reconciliation process. For example, BIA did not disclose or discuss the procedures included in the reconciliation contract which were not performed or could not be completed. Also, BIA did not explain substantial changes in scope or procedures contained in contract modifications and issue papers, such as accounts and time periods that were not covered and alternative source documents used. Further, BIA did not disclose that the universe of leases was unknown or the extent to which substitutions were made to the lease sample originally selected for reconciliation.

In order for the tribes to conclude on whether the reconciliation represents as full and complete an accounting as possible, it was important that BIA explain the limitations in reconciliation scope and methodology and the procedures specified under the original contract that were not performed or were not completed. At a February 1996 meeting in Albuquerque, New Mexico, where BIA and its reconciliation contractor summarized the reconciliation results, tribes raised questions about the adequacy and reliability of the reconciliation results.

The American Indian Trust Fund Management Reform Act of 1994 required that the Secretary of the Interior report to congressional committees by May 31, 1996, including a description of the methodology used in reconciling trust fund accounts and the tribes' conclusions as to whether the reconciliation represents as full and complete an accounting of their funds as possible. The Secretary's May 31, 1996, report indicates that 3 tribes have disputed their account balances, 2 have accepted their account balances, and 275 tribes have not yet decided whether to accept or dispute their account balances.

LEGISLATED SETTLEMENT PROCESS

If Interior is not able to reach agreement with tribes on the reconciliation results, a legislated settlement process would prove useful in resolving disputes about account balances. Our March 1995 testimony[4] suggested that the Congress consider establishing a legislated settlement process. Our September 1995 report provided draft settlement legislation for discussion purposes. The draft legislation would provide for a mediation process and, if mediation does not resolve disputes, a binding arbitration process. The proposed process draws on advice provided us by the Federal Mediation and Conciliation Service and

[4]Financial Management: Indian Trust Fund Accounts Cannot Be Fully Reconciled (GAO/T-AIMD-95-94, March 8, 1995).

the rules of the American Arbitration Association. Both of these organizations have extensive experience in the use of third party facilitators to provide alternative dispute resolution. The proposed process offers a number of benefits, including flexibility in presentation of evidence and, because the decision of the arbitrators would be binding and could not be appealed, a final resolution of the dispute.

TRUST FUND MANAGEMENT IMPROVEMENT INITIATIVES

BIA's reconciliation project attempted to discover any discrepancies between its accounting information and historical transactions that occurred prior to fiscal year 1993. However, unless the deficiencies in Interior's trust fund management that allowed those discrepancies to occur are corrected, such discrepancies could continue to occur, possibly leading to a need for future reconciliation efforts. Since 1991, our testimonies and reports on BIA's efforts to reconcile trust fund accounts have called for a comprehensive strategic plan to guide future trust fund management and ensure that trust fund accounts are accurately maintained in the future. While OTFM and OTR have undertaken a number of corrective actions, progress has been slow, results have been limited, and further actions are needed.

OTFM, Interior, and OTR have initiated several trust fund management improvements during the past 3 years. These include

-- acquiring a cadre of experienced trust fund financial management staff;
-- issuing trust fund IIM accounting procedures to BIA field offices, developing records management procedures manuals, and issuing a trust fund loss policy;
-- implementing an interim, core general ledger and investment accounting system and performing daily cash reconciliations;
-- studying IIM and subsidiary system issues;
-- reinstating annual trust fund financial statement audits; and
-- initiating improvements to the Land Records Information System.

Qualified Staff

Our 1991 testimonies[5] and June 1992 report[6] identified a lack of

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[5]Bureau of Indian Affairs' Efforts to Reconcile and Audit the Indian Trust Funds (GAO/T-AFMD-91-2, April 11, 1991), and Bureau of Indian Affairs' Efforts to Reconcile, Audit, and Manage the Indian Trust Funds (GAO/T-AFMD-91-6, May 20, 1991).

[6]Financial Management: BIA Has Made Limited Progress in Reconciling Trust Accounts and Developing a Strategic Plan (GAO/AFMD-92-38, June 18, 1992).

trained and experienced trust fund financial management staff. Previous studies and audits by Interior's Inspector General and public accounting firms also identified this problem. Our June 1992 report recommended that BIA prepare an organization and staffing analysis to determine appropriate roles, responsibilities, authorities, and training and supervisory needs as a basis for sound trust fund management. In response to our recommendation, in 1992, OTFM contracted for a staffing and workload analysis and developed an organization plan to address critical trust fund management functions.

The appropriations committees approved OTFM's 1994 reorganization plan. As of October 1995, OTFM had made significant progress in hiring qualified financial management and systems staff. However, during fiscal year 1996, 27 BIA personnel displaced by BIA's reduction-in-force were reassigned to OTFM. This represents about one-third of OTFM's on board staff. Some of these reassigned staff displaced OTFM staff, while others filled vacant positions that would otherwise have been filled through specialized hiring. As a result, OTFM will face the challenge of providing additional supervision and training for these reassigned staff while continuing to work with BIA's Area and Agency Office trust accountants to monitor corrective actions and plan for additional improvements.

Policies and Procedures

Our April 1991 testimony identified a lack of consistent, written policies and procedures for trust fund management. We recommended that BIA develop policies and procedures to ensure that trust fund balances remain accurate once the accounts are reconciled. Our April 1994 testimony[7] reiterated this recommendation and further recommended that BIA initiate efforts to develop complete and consistent written trust fund management policies and procedures and place a priority on their issuance. BIA has not yet developed a comprehensive set of policies and procedures for trust fund management. However, OTFM developed two volumes of trust fund IIM accounting procedures for use by BIA's Area and Agency Office trust fund accountants and provided them to BIA's Area and Agency Offices during 1995.

Also, during 1995, OTFM developed two records management manuals, which address file improvements and records disposition. Missing records were the primary reason that many trust fund accounts could not be reconciled during BIA's recent reconciliation effort. In addition, OTFM is developing a records management implementation plan, including an automated records inventory

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[7]Financial Management: Status of BIA's Efforts to Reconcile Indian Trust Fund Accounts and Implement Management Improvements (GAO/T-AIMD-94-99, April 12, 1994).

system.

In January 1992[8] and again in January 1994,[9] we reported that BIA's trust fund loss policy[10] did not address the need for systems and procedures to prevent and detect losses, nor did it instruct BIA staff on how to resolve losses if they occurred. The policy did not address what constitutes sufficient documentation to establish the existence of a loss, and its definition of loss did not include interest that was earned but not credited to the appropriate account. Our January 1994 report suggested a number of improvements, such as articulating steps to detect, prevent, and resolve losses. OTFM addressed our suggestions and issued a revised trust fund loss policy in 1995. However, while OTFM has made progress in developing policies and procedures, OTFM officials told us that BIA's Area and Agency Office trust accountants have not consistently implemented these policies and procedures.

In addition to developing selected policies and procedures, OTFM officials told us that they began performing monthly reconciliations of the trust fund general ledger to Treasury records in fiscal year 1993 and that they work with BIA Area and Agency Offices to ensure that unreconciled amounts are properly resolved. OTFM officials also told us that they have had limited resources to monitor Agency Office reconciliation performance and assist BIA Agency Office personnel in resolving reconciliation discrepancies. While we have not reviewed this reconciliation process, it is expected that it would be reviewed in connection with recently reinstated trust fund financial statement audits.

In addition, an OTFM official told us that a lack of resources has impeded OTFM's performance of its quality assurance function, which was established to perform internal reviews to help ensure the quality of trust fund management across BIA offices. For example, according to the OTFM official, until recently, funds were not available to travel to Area and Agency Offices to determine whether the accounting desk procedures and trust fund loss policy have been properly implemented.

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[8]<u>BIA Reconciliation Monitoring</u> (GAO/AFMD-92-36R, January 13, 1992).

[9]<u>BIA's Trust Fund Loss Policy</u> (GAO/AIMD-94-59R, January 14, 1994).

[10]The loss policy addresses Indian trust fund account losses that are due to BIA errors, such as mathematical errors or other losses that resulted from poor accounting practices or controls.

Interim Trust Accounting System

Our June 1992 report recommended that BIA review its current systems as a basis for determining whether systems modifications will most efficiently bring about needed improvements or whether alternatives should be considered, including cross-servicing arrangements, contracting for automated data processing services, or new systems design and development. In response to our recommendation, OTFM explored commercially available off-the-shelf trust accounting systems and contracted for an interim, core general ledger and investment accounting system.

OTFM made a number of other improvements related to implementing the interim, core trust accounting system. For example, OTFM

- -- obtained Office of the Comptroller of the Currency assistance to develop core general ledger and investment accounting system operating procedures;
- -- initiated direct deposit of collections to BIA Treasury accounts through the Automated Clearing House;
- -- initiated automated payment processing, including electronic certification, to facilitate direct deposit of receipts to tribal accounts;
- -- conducted a user survey and developed a systems user guide;
- -- established a help desk to assist system users by providing information on the new system, including a remote communication package for tribal dial-in capability; and
- -- provided system access to Area and Agency Offices and tribal personnel.

While the new system has eliminated the need for manual reconciliations between the general ledger and investment system and facilitates reporting and account statement preparation, tribes and Indian groups have told us that the new account statements do not provide sufficient detail for them to understand their account activity. For example, they said that because principal and interest are combined in the account statements, it is difficult to determine interest earnings. They told us that the account statements also lack information on investment yields, duration to maturity, and adequate benchmarking.[11] For tribes that have authority to spend interest earnings, but not principal amounts, this lack of detail presents accountability problems. Representatives of some tribes told us that they either have or plan to acquire systems to fill this information gap. OTFM is planning system enhancements to separately identify principal and interest earnings. However, additional enhancements would be needed to address investment

[11]OTFM provides benchmarks that are the average annual yield of all tribal trust funds rather than comparable private sector yield benchmarks.

management information needs.

IIM and Subsidiary Accounting System

In January 1996, the Special Trustee formed a working group consisting of tribal representatives and members of allottee associations, which represent individual Indians; BIA and Office of Special Trustee field office staff; and OTFM staff to address IIM and subsidiary accounting issues. In addition, OTFM has scheduled four consultation meetings with tribes and individual Indians between June and August 1996 to determine how best to provide customer services to IIM account holders. These groups will also consider ways to reduce the number of small, inactive IIM accounts. According to the Special Trustee, about 225,000 IIM accounts have balances of less than $10.

Trust Fund Financial Statement Audits

In 1995, OTFM initiated a contract to resume audits of the trust fund financial statements. OTFM had not had a trust fund financial statement audit since 1990, pending completion of the trust fund account reconciliation project. The fiscal year 1995 audit is covering the trust fund Statement of Assets and Trust Fund Balances, and the fiscal year 1996 audit will cover the same statement and a Statement of Changes in Trust Fund Balances.

Land Records and Ownership System Improvements

In 1993, BIA's Office of Trust Responsibility (OTR) initiated improvements to its Land Records Information System (LRIS). These improvements were to automate the chain-of-title function and result in more timely land ownership determinations. In September 1994, we reported[12] that OTR had 2-year backlogs in ownership determinations and recordkeeping which could have a significant impact on the accuracy of trust fund accounting data. We recommended that BIA provide additional resources to reduce these backlogs, through temporary hiring or contracting, until the LRIS improvements could be completed.

However, according to OTR's Land Records Officer, the additional resources were not made available as a result of fiscal year 1995 and 1996 budget cuts. Instead, BIA eliminated 6 Land Title and Records Office positions in fiscal year 1995 and an additional 30 positions in BIA's fiscal year 1996 reduction-in-force. As a result, OTR's five Land Title and Records Offices and its four Title Service Offices now have a combined staff of 90 full-time equivalent (FTE) positions--compared with 126 staff on September

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[12]Financial Management: Focused Leadership and Comprehensive Planning Can Improve Interior's Management of Indian Trust Funds (GAO/AIMD-94-185, September 22, 1994).

30, 1994--to work on the backlog in title ownership determinations and recordkeeping while also handling current ownership determination requests. While current OTR backlogs are somewhat less than in 1994, BIA's Land Records Officer estimates that over 104 staff years of effort would be needed to eliminate the current backlog. However, because LRIS improvements are on hold, these backlogs are likely to grow.

Additional Improvements Are Needed

While BIA and OTFM have begun actions to address many of our past recommendations for management improvements, progress has been limited and additional improvements are needed to ensure that trust funds are accurately maintained in the future and the needs of the beneficiaries are well-served. For example, BIA's IRMS subsidiary and IIM system may contain unverified and potentially incorrect information on land and lease ownership that some BIA offices may be using to distribute trust fund receipts to account holders. According to a BIA official, some of BIA's Agency Office staff update IRMS ownership files based on unverified information they have developed because LRIS information is significantly out-of-date. Our September 1994 report stated that without administrative review and final determination and certification of ownerships, there is no assurance that the ownership information in BIA's accounting system is accurate. Our report also stated that eliminating redundant systems would help to ensure that only official, certified data are used to distribute trust fund revenue to account holders.

Although Interior formed a study team to develop an IIM subsidiary system plan, the team's August 1995 report did not include a detailed systems plan. Further, BIA and OTFM have not yet performed an adequate user needs assessment; explored the costs and benefits of systems options and alternatives; or developed a systems architecture as a framework for integrating trust fund accounting, land and lease ownership, and other trust fund and asset management systems.

However, even if OTR resolves its ownership determination and recordkeeping backlogs and OTFM acquires reliable IIM and subsidiary accounting systems, IIM accounting will continue to be problematic due to fractionated ownerships. Under current practices, fractionated ownerships, which result from inheritances, will continue to complicate ownership determinations, accounting, and reconciliation efforts because of the increasing number of ownership determinations and trust fund accounts that will be needed.

Our April 1994 testimony[13] stated that BIA lacked an accounts receivable system. Interior officials told us that developing an accounts receivable system would be problematic because BIA does not have a master lease file as a basis for determining its accounts receivable. As a result, BIA does not know the total number of leases that it is responsible for managing or whether it is collecting revenues from all active leases. BIA has not yet begun to plan for or develop a master lease file.

In addition, BIA and OTFM have not developed a comprehensive set of trust fund management policies and procedures. Comprehensive written policies and procedures, if consistently implemented, would help to ensure proper trust fund accounting practices. Also, to encourage consistent implementation of policies and procedures, quality assurance reviews and audits are an important tool.

In 1994, OTFM developed a plan to contract for investment custodian and advisor services. These initiatives were planned for implementation in fiscal year 1995. However, OTFM has delayed its contract solicitation for investment custodian services until the end of June 1996 and has only recently begun to develop a contract solicitation for investment advisors. OTFM officials told us that a lack of resources has caused them to delay contracting for these services.

Strategic Plan for Trust Fund Management

Since 1991, our testimonies and reports have called for Interior to develop a comprehensive strategic plan to guide trust fund management improvements across Interior agencies. We have criticized Interior's past planning efforts as piecemeal corrective action plans which fell short of identifying the departmentwide improvements needed to ensure sound trust fund management. Our June 1992 and September 1994 reports and our April 1994 testimony recommended that Interior's strategic plan address needed improvements across Interior agencies, including BIA, BLM, and MMS. We endorsed the American Indian Trust Fund Management Reform Act of 1994, which established a Special Trustee for American Indians reporting directly to the Secretary of the Interior. The act made the Special Trustee responsible for overseeing Indian trust fund management across these Interior agencies and required the Special Trustee to develop a comprehensive strategic plan for trust fund management.

The Senate confirmed the appointment of the Special Trustee for American Indians in September 1995. In February 1996, the

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[13] Financial Management: Status of BIA's Efforts to Reconcile Indian Trust Fund Accounts and Implement Management Improvements (GAO/T-AIMD-94-99, April 12, 1994).

Special Trustee reported that the $447,000 provided for his office for fiscal year 1996 is insufficient to finance the development of a comprehensive strategic plan for trust fund financial management. Despite the funding limitations, using contractor assistance, the Special Trustee has prepared an initial assessment and strategic planning concept paper. However, the concept paper focuses on one potential system solution for addressing critical OTFM and BIA financial management information requirements and does not address other alternatives. It also does not address programs across Interior agencies or all needed improvements. In addition, the concept paper does not explain the rationale for many of the assumptions that support the detail for the $147 million estimate to implement the specified improvements.

In contrast to the concept paper, a comprehensive strategic plan would reflect the requirements of the Department, BIA, BLM, MMS, OTFM, and other Interior agency Indian trust programs. It would also address the relationships of the strategic plans for each of these entities, including information resource management, policies and procedures, and automated systems.

In addition, a comprehensive strategic plan would address various trust fund related systems options and alternatives and their associated costs and benefits. For example, the concept paper proposes acquiring new trust fund general ledger and subsidiary accounting systems but, unlike a strategic plan, it does not analyze the costs, benefits, advantages, and disadvantages of enhancing OTFM's current core general ledger and investment system.

Further, since 1993, OTR has been planning for LRIS upgrades, including automated chain-of-title, which would facilitate ownership determinations and recordkeeping. Because it is planned that LRIS will provide a BIA link to Interior's core Automated Land Records Management System (ALMRS), a comprehensive strategic plan would need to consider the merits of LRIS in determining how trust ownership and accounting information needs can best be addressed. ALMRS is being developed by BLM at an estimated cost of $450 million. Because ALMRS and LRIS were costly to develop and they contain interrelated data, a comprehensive strategic plan would also need to consider the advantages and disadvantages of linking LRIS to the trust fund accounting system, as compared with acquiring a new land records and ownership system, in determining the best way to manage Indian trust funds and assets.

The Special Trustee and OTFM Director told us that they currently lack the resources to adequately plan for and acquire needed trust fund system improvements. However, without accurate, up-to-date ownership and subsidiary accounting information, trust fund account statements will continue to be unreliable.

The Special Trustee told us that due to limited resources and the need for timely solutions, he is considering ways to use changes in policies and procedures to deal with some trust fund problems. Many of the problems identified in his concept paper are not strictly systems problems, and they do not necessarily require systems solutions.

We agree that certain changes should be considered that would not require systems solutions. For example, centralizing management functions could help resolve the problems of inconsistent ownership determinations and inconsistent accounting practices. The centralization of some functions, such as handling trust fund collections through lock box payments to banks, could also result in management efficiencies. Similarly, ownership determination and recordkeeping backlogs might be better addressed by centralizing the five Land Title and Records Offices and using contractor assistance or temporary employees until system improvements are in place. Even with centralization of some functions, customer information and services could continue to be provided locally for customer convenience.

GAO OBSERVATIONS

Although OTFM made a massive attempt to reconcile tribal accounts, missing records and systems limitations made a full reconciliation impossible. Also, cost considerations and the potential for missing records made individual Indian account reconciliations impractical. A legislated settlement process could be used to resolve questions about tribal account balances.

Three major factors--lack of comprehensive planning, lack of management commitment across the organization, and limited resources--have impeded Interior's progress in correcting long-standing trust fund management problems. When the trust fund reconciliation project was initiated, it was envisioned that by the time it was completed, adequate organizational structures, staffing, systems, and policies and procedures would be in place to ensure that trust fund accounts were accurately maintained in the future. However, piecemeal planning and corrective actions continue, and Interior still lacks a departmentwide strategic plan to correct trust fund management problems.

In addition, while it is critical that all parts of the organization are committed to supporting and implementing trust fund management improvement initiatives, some BIA field offices are continuing to follow improper and inconsistent accounting practices. Given the continuing difficulty in managing a trust program across approximately 60 BIA offices, it is important to consider streamlining options such as centralization of collections, accounting, and land title and recordkeeping functions.

Finally, Interior and BIA officials told us that they lack the resources to implement many needed corrective actions. However, the development of a comprehensive strategic plan that addresses interrelated functions and systems, identifies costs and benefits of options and alternatives, and establishes realistic milestones is a necessary first step. A departmentwide plan would provide the basis for management and congressional decisions on requests for resources.

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Mr. Chairman and Mr. Vice Chairman, this concludes my statement. I would be glad to answer any questions that you or the Members of the Committee might have.

(913750)

United States General Accounting Office

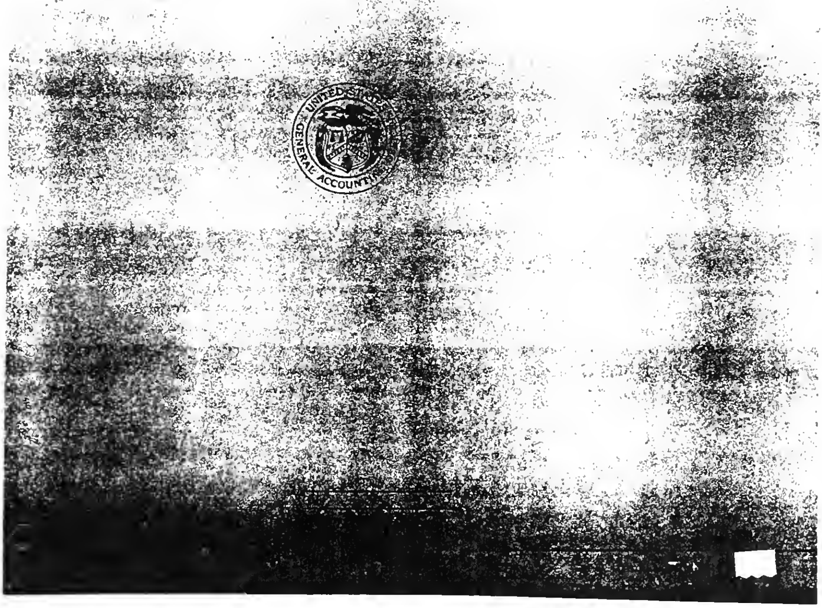
GAO

Report to the Committee on Indian Affairs, U.S. Senate

May 1996

FINANCIAL MANAGEMENT

BIA's Tribal Trust Fund Account Reconciliation Results



GAO

United States
General Accounting Office
Washington, D.C. 20548

Accounting and Information
Management Division

B-266127

May 3, 1996

The Honorable John McCain
Chairman
The Honorable Daniel K. Inouye
Vice Chair
Committee on Indian Affairs
United States Senate

This report responds to your August 1995 request that we review the Bureau of Indian Affairs' (BIA) efforts to reconcile and certify tribal trust fund accounts. Specifically, you asked us to provide our overall observations on the results of the reconciliation effort, including (1) whether the reconciliation report clearly communicated the results of the reconciliation and fully disclosed known limitations, (2) whether the certification contract addressed the extent to which the reconciliation provided as complete an accounting as possible, and (3) the tribes' responses to BIA's reconciliation report.

When the Congress established the Indian trust fund account reconciliation requirement in the Interior Department's fiscal year 1987 supplemental appropriations act, it directed BIA to provide an accounting to the account holders and the Congress. This requirement was expanded in Interior's fiscal year 1990 appropriations act, which provided for an independent certification that the reconciliation was as complete as possible. Until BIA undertook the trust fund account reconciliations in May 1991, the accounts—some of which were 50 to 100 years old—had never been reconciled.[1] The reconciliation process was brought to a close during the fall of 1995, and, in January 1996, a report was issued to each tribe on the results associated with its accounts.

Results in Brief

Although BIA spent over 5 years and about $21 million in a massive effort to locate supporting documentation and reconcile trust fund accounts, tribal accounts could not be fully reconciled or audited due to missing records and the lack of an audit trail in BIA's systems. The January 1996 report package that BIA provided to each tribe presented the results of the reconciliation procedures performed by its contractor for fiscal years 1973 through 1992, BIA's reconciliations for fiscal years 1993 through 1995, and a transmittal letter which described the information provided and BIA's plans

[1] At the direction of the Congress, we studied and investigated tribal receipts and disbursements for fiscal years 1923 through 1951, however, as reported in our February 1, 1929, and our April 1, 1951, reports, we did not attempt to reconcile discrepancies due to inadequate records.

to meet with tribes to discuss the reconciliation results. However, because BIA's report package did not explain or describe the numerous changes in reconciliation scope and methodologies or the procedures that were not performed, the limitations of the reconciliation were not evident. Further, the certification work—which was to verify that the reconciliation was performed in accordance with BIA's reconciliation contract requirements but not that the reconciliation was as complete an accounting as possible—was not completed due to cost and time constraints. Tribes have expressed concerns about the scope and results of the reconciliation process. BIA may be unable to resolve these concerns. Also, cost considerations and the potential for missing records made individual Indian account reconciliations impractical. A legislated settlement process could be used as a framework for resolving questions about both tribal and individual Indian account balances.

Background

In response to tribes' concerns that BIA had not consistently provided them with statements on their account balances, that their trust fund accounts had never been reconciled, and that BIA planned to contract with a third party for management of trust fund accounts, the Congress established the requirement in the Interior Department's fiscal year 1987 supplemental appropriations act that BIA reconcile trust fund accounts before they could be transferred to a third party. In Interior's fiscal year 1990 appropriations act, the Congress required that BIA reconcile the accounts to the earliest possible date. In a March 1990 decision interpreting this requirement, we concluded that "Congress's evident purpose is to obtain, to the greatest extent possible, reliable baseline balances in the various accounts."

In 1990, BIA decided to address the legislative requirement that it reconcile trust fund accounts by contracting for a reconstruction of historical transactions, to ensure that tribal and individual accounts were reconciled as accurately as possible back to the earliest possible date based on available records. In May 1991, BIA awarded a reconciliation contract valued at $12 million over a 5-year period to a major independent public accounting firm. Following a preliminary assessment of the feasibility of reconciling accounts to the earliest date possible, BIA's reconciliation contractor reported in March 1992 that records were available to research tribal accounts for fiscal years 1973 through 1992. BIA's contractor also reported that due to the level of effort and associated cost and the potential for missing documentation, it was not feasible to reconcile Individual Indian Money (IIM) accounts for individual Indians.[2] In addition,

[2]BIA also maintains some IIM accounts for tribes

BIA determined that its contractor should use alternative procedures, rather than specific transaction testing, to verify tribal account balances where insufficient documents were available to reconstruct the accounting or where more efficient approaches were identified.

In addition to requiring that the accounts be reconciled to the earliest possible date, Interior's fiscal year 1990 appropriations act required an independent certification that the reconciliation resulted in the most complete reconciliation possible. In September 1993, BIA awarded a certification contract for $1.2 million to another major independent accounting firm to verify that the reconciliation procedures were performed in accordance with the reconciliation contract. BIA terminated the certification contract as of November 30, 1995. As of February 14, 1996, BIA had obligated over $21 million for the 5-year reconciliation effort, including $18.3 million for reconciliation work and $2.8 million for certification work.

The American Indian Trust Fund Management Reform Act of 1994 required the Secretary of the Interior to provide tribes with reconciled account statements as of September 30, 1995. To meet this requirement, BIA included reconciled account statements, which it prepared for fiscal years 1993 through 1995, in the reconciliation report package for each tribe. The act also requires the Secretary of the Interior to report to the Senate Committee on Indian Affairs and the House Committee on Resources by May 31, 1996, (1) methodologies used to reconcile the accounts, (2) whether tribes accept or dispute their reconciled account balances, and (3) how the Secretary plans to resolve any disputes.

BIA's Office of Trust Funds Management (OTFM)[3] was responsible for carrying out the reconciliation and certification effort. As of the end of fiscal year 1995, OTFM reported that it managed and accounted for approximately $2.6 billion in Indian trust funds—about $2.1 billion for about 1,500 tribal accounts and about $453 million for nearly 390,000 IIM accounts. The balances in the trust fund accounts have accumulated primarily from payments of claims; oil, gas, and coal royalties; land use agreements; and investment income. Fiscal year 1995 reported receipts to the trust accounts from these sources totaled about $1.9 billion, and disbursements from the trust accounts to tribes and individual Indians totaled about $1.7 billion.

[3] On February 9, 1996, a Secretarial Order implemented Interior's Office of the Special Trustee for American Indians, which was established by the American Indian Trust Fund Management Reform Act of 1994. The Order also transferred OTFM from BIA to the Office of the Special Trustee.

Scope and Methodology

To provide our observations on the results of the reconciliation and certification efforts, we reviewed reconciliation and certification contracts and issue papers,[4] contractor status reports and memoranda, and prototype reconciliation report drafts. We met with Interior, BIA, and Office of Management and Budget (OMB) officials, including BIA's Special Assistant to the Deputy Commissioner of Indian Affairs for the reconciliation project (Reconciliation Project Manager), Interior's Special Trustee for American Indians, and representatives of the independent accounting firms that BIA contracted with to perform the reconciliation and certification to discuss our concerns about the reconciliation effort and the certification contract. To obtain tribes' views on the reconciliation and certification efforts, we contacted representatives of the Intertribal Monitoring Association (ITMA), which represents a number of tribal account holders, and representatives of non-ITMA member tribes. We attended BIA's February 1996 National Meeting in Albuquerque, New Mexico, to observe Interior's and BIA's presentation on the reconciliation procedures, reports, and results and the tribes' responses.

We conducted our work between April 1995 and March 1996 at BIA's headquarters in Washington, D.C., and its Office of Trust Funds Management in Albuquerque, New Mexico. Our work was performed in accordance with generally accepted government auditing standards. We requested comments on a draft of this report from the Interior Department's Special Trustee for American Indians. On April 2, 1996, we received written comments from BIA's Reconciliation Project Manager. These comments are discussed in the "Agency Comments and Our Evaluation" section of this report. While we are not reprinting these comments, copies are available from GAO.

Reconciliation Results

Although BIA identified about 20,000 boxes of accounting documents and lease records and spent about 5 years attempting to reconcile tribal trust accounts, sufficient records were not available to fully reconcile the accounts. For example, BIA's reconciliation contractor verified 218,531 of tribes' noninvestment receipt and disbursement transactions totaling $15.3 billion, or 86 percent, of the $17.7 billion in transactions that were recorded in the general ledger. However, due to missing records, the contractor was not able to verify 32,901 of these transactions totaling $2.4 billion (gross). In addition, BIA was not able to determine the total amount of receipts and disbursements that should have been recorded and

[4] In addition to contract modifications, issue papers were used to discuss and approve revisions to reconciliation procedures as unforeseen circumstances were encountered

had no reconciliation procedure to address the completeness of the accounting records.

BIA's contractor also specifically tested $21.3 billion, or 16 percent, of the investment transactions. According to BIA's Reconciliation Project Manager, in order to achieve efficiencies, BIA decided to verify investment activity by asking its contractor to perform alternative procedures to review interest yields. BIA performed related procedures to reconcile investment system balances and BIA's contractor identified deposit lag times (for information purposes only) on collections. However, the completeness of these procedures was also impacted by missing records.

BIA's contractor reconciled 692 leases with collections greater than $25,000 and collections for 227 months for 213 timber sales contracts for certain tribes. BIA's contractor reported that $601 million, or 99 percent, of lease receipts tested were verified. However, this represented only 10.7 percent of the leases originally identified for testing. Because BIA did not know the universe of leases, it could not determine total lease revenue expected to be collected during a given period and, therefore, it could not reliably determine the percent of lease revenue that had been tested.

Further, not all of the reconciliation procedures specified in BIA's reconciliation contract were performed and others could not be completed due to missing records, the lack of an audit trail through BIA's systems, and time and cost constraints. For example, BIA did not reconcile its subsidiary system to its general ledger and BIA could not complete the reconciliation of its Finance System (general ledger) transactions to Treasury records. Also, as stated earlier, because of the cost and level of effort and the potential lack of supporting documents, reconciliations of about 300,000 individual Indian accounts were not performed and no alternative procedures were developed. Appendix I contains detailed information on reconciliation procedures and results.

Reconciliation Reports

In January 1996, BIA provided to each tribe a report package[5] on the results of the reconciliation procedures performed by its contractor for fiscal years 1973 through 1992, BIA's reconciliations for fiscal years 1993 through 1995, and a transmittal letter which described the information provided and BIA's plans to meet with tribes to discuss the reconciliation results.

[5]The report package included unreconciled account statements and a schedule of proposed adjustments for each of the years covered by the reconciliation.

We reviewed several drafts of BIA's reconciliation report package and provided oral and written comments and suggestions to OTFM between May 1995 and January 1996. We suggested that the usefulness of their report could be increased by clarifying technical terms so that the report would be more understandable to nonaccountants. We also suggested that BIA identify methodological changes addressed in contract modifications and issue papers and disclose scope limitations as part of the reconciliation report package. BIA's reconciliation contractor clarified technical language in the agreed-upon procedures report and stated the scope of the work performed. However, BIA did not disclose in the report package to tribes the procedures specified in the reconciliation contract which were not performed or could not be completed and the reasons. In addition, for the procedures which were performed, BIA did not fully disclose scope limitations or changes in methodologies, such as accounts and time periods that were not covered and alternative source documents used. While some scope limitations were discussed at the February 1996 National Meeting with tribes, BIA did not explain all methodological changes resulting from contract modifications and issue papers.

BIA modified the reconciliation contract 29 times and approved approximately 140 issue papers—including about 90[6] which addressed changes in tribal reconciliation scope and procedures. For example, issue papers determined that certain adjustments relating to transfers would be reflected as of their general ledger posting date rather than the date that the original transaction occurred. Using the general ledger posting date instead of the transaction date could impact tribal interest calculations. Other issue papers determined that certain procedures could not be performed for specific tribes due to missing records.

We suggested that substantial changes in the scope or procedures as a result of contract modifications and issue papers be explained in the report package transmitted to the tribes. BIA considered providing issue papers to tribes on compact disk. However, the Reconciliation Project Manager told us that due to cost considerations, BIA decided instead that these issue papers would be made available to tribes at the OTFM in Albuquerque, New Mexico, or that tribes could request copies of specific documents by mail.

According to OTFM officials, a reconciliation report package was issued to each of 269 tribes in January 1996. The reports included summary results

[6]According to the Reconciliation Project Manager, the first 50 issue papers covered the reconciliation feasibility assessment period

for all tribes and specific results on each tribe's accounts. In addition, on March 8, 1996, OTFM issued reports to 112 tribes on their portions of multitribe judgment awards. These judgment awards resulted from claims against the federal government. However, OTFM's Reconciliation Project Manager told us that OTFM may not be able to issue reports to all of the tribes involved in multitribe awards because some are no longer federally recognized as tribal entities, and BIA may not be able to locate the tribes or their descendants.

Certification of Reconciliation Results

The fiscal year 1990 appropriations act required a separate, independent certification that the accounts had been reconciled and audited to the earliest possible date and that the results were the most complete reconciliation possible. The certification requirement was imposed to obtain independent assurance of the accuracy and reliability of the reconciled balances. After the certification contract was awarded in September 1993, congressional committees and several tribes expressed concern about the objective of BIA's certification contract because BIA limited the scope of the certification contract to ensure only that the reconciliation effort was performed in accordance with the reconciliation contract. During the summer of 1995, Interior, OTFM, OMB, and the reconciliation and certification contractors' staff worked on modifying the certification contract to attempt to more fully explain each of the reconciliation procedures that the certification contractor was to verify.

To meet the act's certification requirement, we suggested that the certification contract focus on the extent to which the reconciliation procedures resulted in as complete an accounting as possible. Interior and OTFM officials told us that they believed that the reconciliation procedures, as designed, provided reasonable assurance that the account balances were accurate and that contractor certification on this point was not needed. Therefore, the certification contract focused on verifying that the reconciliation procedures specified in the reconciliation contract had been performed and no independent assessment of completeness was required.

In October 1995, the certification contractor estimated that it would require an additional 6 months and $1.2 million to complete the certification work. According to OTFM's Reconciliation Project Manager, only $600,000 was available to cover the additional work and it was not clear that the work could be completed in 6 months. As a result, Interior and BIA decided to terminate the certification effort as of November 30, 1995, and to obtain a status report from the contractor.

Because the contract was terminated, BIA's certification contractor did not complete its verification that the procedures in the reconciliation contract and related issue papers were performed. The certification contractor issued a status letter on November 30, 1995, which communicated the certification contract scope, methodologies, and preliminary results of 30 segments of the reconciliation work, including specific transaction testing, investment analyses, systems reconciliations, and pilot tribe reconciliation work. The status letter identified the following:

- 16 segments where errors or inconsistencies were reported to OTFM, including 8 segments with numerous errors and inconsistencies and 3 segments with methodological concerns;
- 12 segments where work was not performed by the certification contractor, or information was insufficient to provide results; and
- 2 segments where no errors were identified.

OTFM's Reconciliation Project Manager told us that the reconciliation contractor had addressed all of the issues and questions raised by the certification contractor as of November 30, 1995, and that BIA was following up to obtain clarification on whether the certification contractor had communicated all findings to BIA. Because the certification work was performed while the reconciliation was in process and the certification procedures were not completed, the usefulness of the status letter is limited.

Tribal Concerns

In February 1996, OTFM and reconciliation contractor officials conducted a 2-day meeting with tribes in Albuquerque, New Mexico, to discuss the reconciliation reports and results. BIA had invited all 269 tribes that had received reconciliation reports, and representatives of 79 of these tribes attended the national meeting. At the meeting, OTFM and reconciliation contractor officials summarized the reconciliation results and answered tribes' questions. Tribes raised questions about the (1) adequacy of the objectives and the scope of the reconciliation project, (2) effect of missing documents on the accuracy of the reconciled account balances, and (3) thoroughness of procedures used for testing the accuracy of recorded investment interest income.

Also, tribal representatives said they were concerned that the reconciliation procedures did not provide the same level of assurance as an audit, that BIA rather than the reconciliation contractor had performed some portions of the reconciliation, and that the number of missing

records further limited the assurance provided by the reconciliation results. In addition, tribal representatives said that the investment analyses did not reflect uninvested funds associated with deposit lag times. They were concerned that unearned interest associated with deposit lag times between BIA's receipt of funds and its deposit of the funds in a Treasury-designated federal depository bank could be significant.

The Reconciliation Project Manager explained that while an audit could not be performed due to the number of missing records, the reconciliation contractor performed agreed-upon procedures to attempt to verify account balances. He said that the results of the procedures performed were presented in the auditor's agreed-upon procedures report to each tribe, which was prepared in accordance with American Institute of Certified Public Accountants standards. OTFM's Director said that OTFM will consider having an independent review of the reconciliation work that BIA performed.[7]

The Reconciliation Project Manager explained that the investment analysis was a review of actual investment earnings and, therefore, it did not consider the effect of undeposited receipts or whether the funds earned maximum interest for secured investments. He also explained that for the pro forma analysis, interest was calculated at the Benchmark rate for "uninvested funds" in BIA's cash pool that earned interest at the Treasury overnight rate and comparisons were presented in the tribes' reports for information purposes.

The Reconciliation Project Manager also said that while many actual collection dates to identify the extent of the deposit lag times were not known, tribes could estimate interest amounts for the deposit lag times by using the information provided in their reconciliation reports. In October and November 1990, during discussions between ITMA and BIA on the reconciliation procedures to be performed, ITMA requested that the reconciliation contract identify deposit lag times because it believed that related unearned interest could be significant. BIA agreed to identify the lag times as a reconciliation procedure; however, BIA did not agree to propose adjustments to pay the lost interest. Because the law requires the Secretary of the Interior to invest and pay interest on tribal funds, ITMA stated that if BIA did not propose interest adjustments related to the deposit lag times, this information should be available for settlement negotiations. According to the Reconciliation Project Manager, the deposit

[7]In comments on a draft of our report, BIA's Reconciliation Project Manager stated that OTFM will consider having the tribes or their representatives review the results of BIA's reconciliations

lag times provided in the reconciliation reports can be used by tribes in any settlement discussions with the government.

Tribes stated that they would need significant time to review their reconciliation reports and the supporting documents. OTFM's Reconciliation Project Manager said that tribes could meet BIA's April 19, 1996, time frame for submitting acknowledgement forms to BIA on their response to the reconciliation results by indicating on that form their need for more time to review their reports. According to the Reconciliation Project Manager, BIA had anticipated that tribes may need more time to review their reconciliation reports. As a result, BIA's acknowledgement forms ask tribes to indicate (1) the need for additional time to review the reported results and account statements, (2) the account balances they accept as reconciled, and (3) the account balances they dispute.

According to the Reconciliation Project Manager, OTFM had received acknowledgement forms as of April 16, 1996, from 21 of the 269 tribes that had received a report on their reconciliation results. Of these acknowledgements, 12 tribes indicated that they needed more time, 8 tribes requested individual meetings, and 1 tribe accepted the account balances as reconciled. The Reconciliation Project Manager told us that if a tribe accepts the reconciled account balances as correct before it attends a regional meeting, OTFM will follow up to ensure that the tribe's response reflected a clear understanding of the reconciliation reports and results. Appendix II contains additional information on tribal concerns and OTFM's responses.

OTFM Follow-up With Tribes

OTFM planned five regional meetings[8] between March 1996 and July 1996 to serve as workshops to assist individual tribes in reviewing their reconciliation results. The Reconciliation Project Manager encouraged tribal representatives to carefully review their reconciliation reports, account statements, and the supporting documents for the basic reconciliation that BIA provided to the tribes on compact disks. He also urged the tribes to send their accountants to the regional meetings where each tribe's representatives will be allotted time to meet with the reconciliation contractor and to ask specific questions about their tribe's trust accounts. The regional meetings are to serve as workshops to assist tribes in understanding their reconciliation results.

[8]Since the completion of our audit work, OTFM has held two of the five planned meetings—on March 19-22 in Sacramento, California, and on April 9-12, in Portland, Oregon

According to the Reconciliation Project Manager, OTFM will not be able to complete planned regional meetings with tribes on the reconciliation results until July 20, 1996. As a result, the Secretary of the Interior plans to meet the May 31, 1996, reconciliation reporting requirement in the American Indian Trust Fund Management Reform Act by providing an interim report to the House and Senate Committees by that date and a final report after the regional meetings are completed.

Previous GAO Findings

Our past testimonies and reports anticipated that when the reconciliation was completed, there might not be agreement on reconciled account balances. Our April and May 1991 testimonies[9] stated that it would be difficult to locate records to support the reconciliation effort and that following the reconciliation, some or all accounts might need to be settled. Our June 1992 report[10] recommended that BIA develop a proposal for reaching a satisfactory resolution of the trust account balances with account holders. Our report also stated that the BIA reconciliation contractor's latest cost estimate at that time for reconciling individual Indian accounts ranged from $180 million to $281 million and that because many accounts are not reconcilable, alternative approaches to reach agreement on account balances would be necessary. In March 1995, we testified[11] that further tribal reconciliation work would not provide reasonable assurance that the account balances are accurate and that the time had come for the Congress to consider legislating a settlement process that could include both tribal and individual Indian accounts.

Following our March 1995 testimony, your Committee and the House Committee on Resources, Subcommittee on Native American and Insular Affairs, asked us to prepare, for discussion purposes, draft legislation to establish a settlement process. We issued this draft legislation in September 1995.[12] Reports and testimonies related to our work are listed at the end of this report.

[9] Bureau of Indian Affairs' Efforts to Reconcile and Audit the Indian Trust Funds (GAO/T-AFMD-91-2, April 11, 1991) and Bureau of Indian Affairs' Efforts to Reconcile, Audit, and Manage the Indian Trust Funds (GAO/T-AFMD-91-6, May 20, 1991).

[10] Financial Management: BIA Has Made Limited Progress in Reconciling Trust Accounts and Developing a Strategic Plan (GAO/AFMD-92-38, June 18, 1992)

[11] Financial Management: Indian Trust Fund Accounts Cannot Be Fully Reconciled (GAO/T-AIMD-95-94, March 8, 1995)

[12] Indian Trust Fund Settlement Legislation (GAO/AIMD/OGC-95-237R, September 29, 1995)

Conclusions

Although OTFM made a massive attempt to reconcile tribal accounts, missing records and systems limitations made a full reconciliation impossible. Because BIA does not know the universe of transactions or leases, it does not know the total amount of receipts and disbursements that should have been recorded. Tribes have raised a number of concerns about the adequacy and reliability of the reconciliation results. If follow-up meetings with tribes do not resolve these concerns, the settlement process which we have previously recommended could be used as a framework for resolving disagreements on account balances.

In addition, due to cost considerations and the potential lack of supporting documentation, reconciliations for individual Indian accounts were not performed, and no alternative procedures were developed to verify these account balances. Since any attempt to reconcile these accounts would be costly and the results would be limited, these accounts could be included in the settlement process.

Agency Comments and Our Evaluation

The Interior Department's comments consisted primarily of numerous technical clarifications, which we incorporated where appropriate. The comments neither agreed nor disagreed with our overall message and conclusion that the accounts could not be fully reconciled and that a settlement process could provide a useful framework for resolving disagreements about account balances. However, BIA disagreed with our position that limitations in reconciliation scope and methodologies needed to be disclosed to provide useful information on the completeness of the reconciliation results.

The reconciliation requirement as legislated by the Congress was to reconcile the accounts to the earliest possible date and ensure, through independent certification, that the reconciliation was as complete as possible. Further, the Congress, in the American Indian Trust Fund Management Reform Act, required BIA's report to include a description of the reconciliation methodology and the account holder's conclusion as to whether the reconciliation represents as full and complete an accounting of its funds as possible. Therefore, in order for the tribes and the Congress to understand the reconciliation results and determine whether the reconciliation represents as full and complete an accounting as possible, it was important that BIA explain the limitations in reconciliation scope and procedures, including procedures that were not performed or were not completed.

Our report addresses several areas where our work identified significant reconciliation limitations and changes in procedures and methodologies that we believe should have been disclosed by BIA. These areas include the lack of a known universe of transactions and leases, the use of issue papers to approve changes in reconciliation scope and procedures due to unforeseen circumstances, and reconciliation procedures that could not be completed or were not performed. This additional information provides an important context for understanding the reconciliation results.

We are sending copies of this letter to the House Committee on Resources; the Secretary of the Interior; the Special Trustee for American Indians; the Assistant Secretary, Indian Affairs; the Director of the Office of Management and Budget; and other interested parties.

Please contact me at (202) 512-9508 if you or your staff have any questions concerning this report. Appendix III lists major contributors to this report.

Linda M. Calbom

Linda M. Calbom
Director, Civil Audits

Contents

Abbreviations

BIA	Bureau of Indian Affairs
IIM	Individual Indian Money
IRMS	Integrated Records Management System
ITMA	Intertribal Monitoring Association
MMS	Minerals Management Service
MOU	Memorandum of Understanding
OMB	Office of Management and Budget
OTFM	Office of Trust Funds Management

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Appendix I

Reconciliation Procedures and Results

The reconciliation effort was to cover reconstruction of trust fund account activity, to the extent that records were available, using eight major reconciliation procedures. Due to missing records, the lack of an audit trail in BIA's systems, and cost and time constraints, not all reconciliation procedures could be completed and some procedures were not performed. BIA's reconciliation contractor performed reconciliation procedures for fiscal years 1973 through 1992. To meet the requirement in the American Indian Trust Fund Management Reform Act of 1994 that the reconciliation reports include the results of reconciliations through September 30, 1995, the reconciliation report packages provided to the tribes include the results of reconciliations performed by BIA for fiscal years 1993 through 1995. The report packages also include the results of reconciliations that BIA performed between the investment system and the Finance System (general ledger) for 26 tribes. The following summary addresses the reconciliation procedures that were performed by the contractor and those that could not be performed or were not completed.

Reconciliation Procedures Performed

The six major reconciliation procedures that were performed covered (1) transactions, (2) investment yields, (3) deposit lag times, (4) selected systems, (5) special procedures for five tribes, and (6) lease receipts.

Basic Transaction Reconciliations

This segment of the reconciliation included tracing 251,432 in total recorded noninvestment receipt and disbursement transactions[1] from the general ledger to source documents, such as deposit tickets, disbursement vouchers, and journal vouchers. OTFM's reconciliation contractor reported that $15.3 billion, or 86 percent, of the total $17.7 billion in noninvestment transactions for fiscal years 1973 through 1992 had been verified. According to OTFM's Reconciliation Project Manager, noninvestment transactions for 83 tribes were fully reconciled under this procedure and, for the transactions reconciled, BIA identified a probable error rate of only .01 percent. Where errors were identified, adjustments were proposed.

Due to missing records, 32,901 of the noninvestment transactions totaling $2.4 billion (gross) could not be reconciled. According to Interior and OTFM documents, the $2.4 billion included the following transactions which could not be traced to supporting documentation:

[1] These transactions included receipts and disbursements from judgment awards and income from land-use agreements collected by various BIA offices, including grazing, timber, fishing, and rights of way

- $1.1 billion in receipts credited to tribal accounts that earned interest;
- $.8 billion in tribal drawdowns (disbursements) of their account balances, refunds, and canceled checks; and
- $.5 billion in internal transfers between the same tribe's accounts.

In addition, BIA was not able to determine the total amount of receipts and disbursements that should have been recorded. Therefore, the reconciliation project focused on transactions that were posted to BIA's general ledger for tribal accounts and no reconciliation procedure was performed to address the completeness of the accounting records. Further, the reconciliation report states that BIA, based on its institutional knowledge, did not accept all adjustments proposed by the reconciliation contractor.

BIA's contractor also reconciled $21.3 billion, or 16 percent, of the recorded investment transactions as part of the basic reconciliation process. According to BIA's Reconciliation Project Manager, in order to achieve efficiencies, BIA decided to terminate the detailed transaction reconciliations. Instead, BIA asked its reconciliation contractor to verify investment transactions by performing procedures to review investment yields rather than testing individual transactions. BIA's contractor also identified deposit lag times for BIA collections and reconciled investment systems balances.

Investment Yield Analyses

This segment of the reconciliation included an investment yield analysis to compare tribes' interest earnings to the BIA benchmark rate, which was the annual average yield for all tribal funds invested. Any account's annual yield that was at least 2 percentage points below or 5 percentage points or more above the annual benchmark was investigated for errors. BIA's contractor also recalculated interest earnings on tribal investments in overnight Treasury deposits and compared interest received by tribes to the applicable Treasury rate. As a result of research on variations from the benchmark parameters and the historical Treasury interest rates, adjustments were proposed.

In addition to the yield analysis and Treasury interest analysis, BIA's contractor performed a pro forma analysis to estimate what might have been earned had "uninvested funds" (funds in BIA's cash pool that earned interest at the Treasury overnight rate) yielded returns comparable to the benchmark rates. The results of this procedure were provided for informational purposes and no adjustments were proposed.

Deposit Lag Times

Deposit lag times represent the number of days from the date funds were received by BIA to the date that the funds were deposited in a Treasury-designated federal depository bank. Because the date that the collections were received by BIA's various offices was not always clearly documented on the receipt documents, BIA established a hierarchy for determining surrogate collection dates. For example, if the receipt date did not appear on the collection voucher, the established hierarchy of surrogate dates was as follows—the most recent date on the collection voucher subsequent to the date on the payment check received, the stamped date that the voucher was processed, the date that the voucher was prepared, and the date that the voucher was approved.

The reconciliation report showed that transactions analyzed for lag times for the 20 years covered by the reconciliation totaled about $3.2 billion. These funds were deposited between the established collection date and 30 days or more following the established collection date. The lag time information was provided for information purposes. No interest calculations were reported and no adjustments were proposed for interest lost as a result of deposit lag times. As stated earlier, ITMA requested that BIA present this information in the reconciliation reports.

Systems Reconciliations

The systems reconciliation[2] was to include reconciling (1) information in BIA's trust fund investment system to its general ledger in BIA's Finance System, (2) BIA's tribal general ledger in the Finance System to U.S. Treasury records, and (3) BIA's Integrated Records Management System (IRMS) to Finance System. The IRMS to Finance System reconciliation was not performed and is discussed in the next section of this appendix.

The investment system to Finance System reconciliation covered investment balances as of September 30, 1992. BIA performed the reconciliations for 26 tribes and proposed adjustments totaling nearly $1.9 million. BIA's contractor's reconciliation report disclosed the procedures that BIA had performed.

To support the reconciliation of its tribal general ledger transactions in BIA's Finance System to Treasury reported transactions, OTFM provided available tribal Treasury reports (SF-224, Statement of Transactions

[2]During the 20-year reconciliation period, BIA used three major automated systems for trust fund accounting. They are (1) the Finance System, which was used to perform both tribal and general ledger trust fund accounting, (2) an investment system, which generated summaries of investment securities held on behalf of each tribe, and (3) the Integrated Resources Management System (IRMS), which provided subsidiary accounting for IIM accounts.

Reports) for fiscal years 1990 through 1992 to the reconciliation contractor. BIA's contractor completed the fiscal year 1992 reconciliation and included the results in BIA's January 1996 report package to tribes. However, BIA's reconciliation contractor was not able to complete the fiscal years 1990 and 1991 Finance System reconciliations in time to include them in the January 1996 report package due to differences in the way that BIA and Treasury summarize the tribal trust account activity, which made the reconciliation between their systems difficult. For example, BIA's SF-224, Statement of Transactions Report to Treasury, did not provide sufficient detail to distinguish tribal accounts from other fund accounts. As a result, tremendous effort was needed to reconstruct tribal account transactions from the source documents for fiscal years prior to 1992. According to BIA's Reconciliation Project Manager, a supplemental report on the fiscal years 1990 and 1991 Finance System reconciliations is being finalized for distribution to each tribe. BIA's contractor proposed adjustments to BIA's general ledger and also proposed reporting corrections to Treasury for variances where supporting documentation was available. No adjustments were proposed where supporting documentation could not be located.

The Special Procedures Review for Five Tribes

This effort was designed to perform agreed-upon procedures on an accelerated, pilot basis to identify potential problem areas. Five tribes[3] agreed to participate in the special procedures review. The purpose of this work was to determine the workability of the procedures; however, as specified in the reconciliation contract, this work was to be performed simultaneously with other reconciliation work. BIA prepared a Memorandum of Understanding (MOU) for each tribe to cover both standard and special procedures. Our review of the approved MOUs for each of the five tribes showed that their special procedures generally covered timeliness of payments and deposits, internal control reviews, and special deposit accounts. The MOUs also covered specific areas of concern to each tribe, such as a detailed analysis of certain accounts. We did not review the reconciliation reports provided to these tribes.

Fill-the-Gap Procedures for Leases

These procedures included verifying tribal income by tracing general ledger postings to the original source documents, including leases, sales agreements, and production reports. Receipts tested covered oil, gas, and

[3]The five tribes agreeing to participate in the pilot procedures were the (1) Assiniboine and Sioux Tribes of Fort Peck, Montana, (2) Confederated Salish-Kootenai of Flathead, Montana, (3) Confederated Tribes of the Yakama Nation, Washington, (4) Hopi Tribe of Arizona, and (5) Three Affiliated Tribes of Fort Berthold, North Dakota.

coal royalties; timber sales; other surface leases, such as business leases; and grazing, hunting, fishing, and rights of way. Samples tested were generally selected based on the availability of supporting documentation.

The BIA reconciliation contractor's analysis of the general ledger information showed that 9 percent of the leases represented 95 percent of recorded lease revenues. Based on this analysis, the contract called for a review of all leases greater than $5,000 and a test sample of 100 additional leases of less than $5,000 on a cross section of tribes. The reconciliation contractor globally identified 6,446 surface leases with annual collections of over $5,000. However, due to time constraints for completing the reconciliation, 1,399 leases with collections greater than $25,000 were identified for testing, of which OTFM located 755 lease files. Of the lease files located, 692 leases were tested. Because of missing records, a number of leases and sample test months were substituted for those in the original sample. BIA's reconciliation contractor reported that 99 percent of the lease receipts tested were verified. The leases tested represent 10.7 percent of the leases known to have annual collections greater than $5,000 and about one half of the leases known to have collections greater than $25,000.

In addition, the reconciliation contractor judgmentally selected and tested 227 sample months for 213 timber sales contracts for five tribes[4] with significant timber receipts and oil and mineral receipts for one tribe.[5] BIA's reconciliation contractor reported that 99.7 percent of the timber receipts tested were verified and 93.9 percent of the oil and mineral receipts tested were verified. Overall, BIA's contractor reported that 98.7 percent of the lease revenues tested were reconciled.

Reconciliation Procedures Not Performed

Not all reconciliation procedures that were specified in BIA's initial reconciliation contract could be performed or completed due to missing records and time and cost constraints associated with the need to locate and trace numerous manual records. However, BIA's transmittal letter to tribes did not disclose the inability to complete these procedures. Reconciliation procedures that could not be performed or completed covered (1) reconciling the IRMS (subsidiary system) to the Finance System (general ledger) and reconciling the Finance System to Treasury

[4]The five tribes are Hoopa Valley Tribe, California, Makah Tribe, Spokane Business Council, and Colville Business Council, Washington; and Confederated Tribes of Warm Springs, Oregon.

[5]The one tribe with significant oil and mineral receipts that were collected by BIA was the Osage Nation of Oklahoma.

transactions for fiscal years prior to 1990, (2) verifying balances in tribal IIM[6] and special deposit accounts,[7] (3) verifying Minerals Management Service (MMS) royalty collections, and (4) reconciling accounts of individual Indians.

Subsidiary Systems Reconciliations

While BIA officials told us that the IRMS reconciliation was not performed due to time and funding limitations, we believe that even without those limitations, the lack of an audit trail in the IRMS system—including the lack of distribution tables to support disbursements—would have prevented reconciliation of tribal IIM and special deposit accounts. It also would have prevented or severely limited IRMS to Finance System reconciliations. In addition, the Finance System was not reconciled to Treasury for fiscal years prior to 1990.

Reconciliations of Tribal IIM and Special Deposit Accounts

This initiative was to include exploratory work on the reconciliation of tribal IIM and special deposit accounts for the five tribes that participated in the special procedures pilot work. Tribal IIM accounts maintained in the IRMS system were to be reconciled to the source documents and tribal special deposit accounts were to be reconciled from the source documents that moved the funds to the tribes' general ledger accounts. Due to missing records and the lack of an audit trail through the IRMS system, BIA determined that tribal transactions could not be efficiently isolated from individual Indian transactions. According to OTFM's Reconciliation Project Manager, the special deposit account work for each of the five tribes was completed and the results were included in their reconciliation reports. However, special deposit account reconciliations related to leases were not performed because of a change in BIA's method for selecting leases, which excluded leases with multiple owners for which payments could not be identified to each owner.

Fill-the-Gap Procedures for MMS

These procedures were requested by ITMA to fill the gap between the posting of collection transactions and the leases in order to determine whether MMS Indian royalty accounting data transferred to BIA were reliable. The initial work was to include a review of MMS procedures and documents in order to evaluate the feasibility and level of effort needed to

[6]Tribal IIM accounts are maintained in the IRMS accounting system. Because tribal and individual IIM funds are commingled in the accounting records, tribal funds cannot be identified or distributed until ownership records are researched for all leases

[7]BIA uses special deposit accounts primarily as clearing accounts for funds received that have not been distributed to account holders because the account owners have not been identified

perform detailed fill-the-gap work for MMS receipts and to recommend test procedures. Because MMS retained records for only 6 years, records for most of the 20-year reconciliation period were not available. As a result, BIA asked its reconciliation contractor to recommend procedures to verify that MMS followed its royalty collection and accounting procedures. However, the procedures proposed by BIA's contractor would not have traced collections from the leases to the general ledger. The verification of MMS' procedures, which was to be performed in fiscal year 1996, was not performed because the reconciliation project was brought to a close as of September 30, 1995.

IIM Reconciliations

Our June 1992 report[8] stated that many of the approximately 300,000 IIM accounts were not reconcilable due to missing records and the cost of reconciling a large number of accounts with small balances. BIA's reconciliation contractor initially estimated a cost ranging from $211 million to nearly $400 million. A subsequent scope reduction decreased the estimate to between $180 million and $281 million, which was about one-half of the reported $440 million balance of the IIM accounts as of September 30, 1991. BIA's reconciliation contract did not include IIM accounts.

In our June 1992 report, we recommended that BIA consider alternative approaches to reach agreement on IIM account balances, such as negotiating agreements with account holders. In 1991, BIA established a work group to develop IIM reconciliation approaches and alternatives. In 1995, the work group identified a number of reconciliation and policy questions for presentation to BIA and Interior management, including statistical sampling, using dollar ceilings, reconciling for time periods where records are available, and sending account statements to account holders for them to confirm or question the balances. However, as of March 1, 1996, no decision had been made on workable IIM account reconciliation alternatives.

[8]Financial Management: BIA Has Made Limited Progress in Reconciling Trust Accounts and Developing a Strategic Plan (GAO/AFMD-92-38, June 18, 1992)

Appendix II

Tribal Concerns

At BIA's February 1996, National Meeting to explain reconciliation reports and results, tribes raised a number of concerns, including the (1) adequacy of the objectives and scope of the reconciliation project, (2) effect of missing documents on the accuracy of the reconciled account balances, and (3) thoroughness of procedures used for testing the accuracy of recorded investment interest income. The following discussion highlights the tribes' concerns and OTFM's responses.

Project Objectives and Scope

Tribal concerns about the reconciliation project's objectives and scope included the following:

- the lack of an audit and how this affected the reliability of the reconciled account balances,
- the failure to include fraud as a reconciliation objective,
- the reliability of portions of the reconciliations that BIA rather than the independent contractor had performed and adjustments that BIA had proposed, and
- the fact that the effort seemed to consist mainly of a reconciliation of BIA accounts with BIA-generated documents.

In response to these concerns, OTFM and reconciliation contractor officials explained the following:

- The accounts could not be audited due to missing records and, as a result, the reconciliation consisted of agreed-upon procedures to verify account balances to the extent practicable.
- While detection of fraud was not a reconciliation objective, no instances of fraud were identified by the reconciliation contractor.
- BIA had reconciled investment system data for several years before the reconciliation effort began and that BIA did not believe that it was cost-effective to repeat this work.
- Because the American Indian Trust Fund Management Reform Act of 1994 required that BIA provide tribes with reconciled accounts statements as of September 30, 1995, the statements include the results of reconciliation procedures performed by BIA's contractor for fiscal years 1973 through 1992, and the results of OTFM's systems reconciliations for fiscal years 1993 through 1995.
- OTFM will consider having an independent auditor review the results of the procedures performed and adjustments proposed by BIA.[1]

[1]In comments on a draft of our report, BIA's Reconciliation Project Manager stated that OTFM will consider having the tribes or their representatives review the results of BIA's reconciliations

- Tribal authorizations for withdrawals of trust funds and Treasury receipt and disbursement documentation were reviewed during the reconciliation

Missing Documents

Tribal representatives pointed out that the reconciliation report stated that missing documents had prevented the reconciliation of almost 33,000 general ledger transactions totaling $2.4 billion (gross) and many of the leases selected for testing. They raised concerns about the assurance provided by the reported results, including the following:

- The large amount of unreconciled transactions may have impacted the validity of the reported reconciliation results.
- The methodology provided no assurance that all transactions were recorded in the general ledger.
- Because BIA had no comprehensive database for leases and no accounts receivable system, it had no way of determining the universe of leases or the amounts of lease revenue expected to be collected during a given period.
- The small judgmental sample of leases tested may not be representative of the universe of receipt transactions.
- The fill-the-gap procedures, which attempted to trace receipts from the general ledger to the leases or other land-use agreements, were not designed to find leases that were not already known to exist.
- Proposed adjustments that showed amounts owed by tribes on lease receipts may have resulted from overpayments by companies which may have been corrected in subsequent periods that were not reviewed by the reconciliation contractor.

OTFM's Reconciliation Project Manager told tribal representatives that despite time and money constraints, the government had made a good-faith effort to reconcile the tribal accounts and that BIA had identified a low error rate for the transactions that could be reconciled. The Reconciliation Project Manager and contractor officials explained the following:

- BIA does not know the universe of leases and the general ledger was the starting point for both the basic transaction reconciliations and the lease receipt testings.
- In some instances, the reconciliation contractor was able to verify lease receipts against lease documents and trace them to the general ledger.
- Judgmentally selected sample test months for about 10 percent of the total leases originally identified for testing were tested.

- It was possible that for lease overpayments, subsequent adjustments were made that were not reviewed by the reconciliation contractor.

Investment Analysis

Another area of concern to tribes was the investment analysis. This task included certain analytical procedures and interest yield analyses for investment in Treasury securities and other investments. Tribes expressed the following concerns:

- Invested funds may not have earned maximum interest.
- The yield analyses would not reflect unearned interest on uninvested amounts due to deposit lag times—the time that elapsed between BIA's various offices' receipt of lease revenues and the time the funds were invested
- The actual lag times could not be determined due to missing records and the dates used in the lag time calculations could have been several days after the actual collection date.
- The 30-day category included lag times of over 30 days.
- Unearned interest resulting from deposit lag times could be significant.

OTFM's Reconciliation Project Manager provided the following clarifications.

- BIA invested funds in government securities or collateralized accounts, as required.
- The yield analysis did not reflect undeposited amounts due to lag times.
- Priorities were established for determining collection dates.
- The zero lag time category generally represented the actual collection dates.
- Although the 30-day category included lag times of over 30 days, tribes could, for the most part, calculate the interest related to lag times by using the information in their reconciliation reports.

Appendix III

Major Contributors to This Report

Accounting and Information Management Division, Washington, D.C.	Gayle L. Fischer, Assistant Director Michael J. Koury, Audit Manager Caryn A. Catignani, Auditor
Office of the General Counsel	Thomas H. Armstrong, Assistant General Counsel

Related GAO Products

Indian Trust Fund Settlement Legislation (GAO/AIMD/OGC-95-237R, September 29, 1995).

Financial Management: Indian Trust Fund Accounts Cannot Be Fully Reconciled (GAO/T-AIMD-95-94, March 8, 1995).

Financial Management: Native American Trust Fund Management Reform Legislation (GAO/T-AIMD-94-174, August 11, 1994).

BIA Reconciliation Recommendations (GAO/AIMD-94-138R, June 10, 1994).

Financial Management: Status of BIA's Efforts to Reconcile Indian Trust Fund Accounts and Implement Management Improvements (GAO/T-AIMD-94-99, April 12, 1994).

Financial Management: BIA's Management of the Indian Trust Funds (GAO/T-AIMD-93-4, September 27, 1993).

Financial Management: Creation of Bureau of Indian Affairs' Trust Fund Special Projects Team (GAO/AIMD-93-74, September 21, 1993).

Financial Management: Status of BIA's Efforts to Resolve Long-Standing Trust Fund Management Problems (GAO/T-AFMD-93-8, June 22, 1993).

BIA Appropriation Language (on Tolling the Statute of Limitations on Certain Indian Claims) (GAO/AFMD-93-84R, June 4, 1993).

Financial Management: Status of BIA's Efforts to Resolve Long-Standing Trust Fund Management Problems (GAO/T-AFMD-92-16, August 12, 1992).

Indian Issues: GAO's Analysis of Land Ownership at 12 Reservations (GAO/T-RCED-92-75, July 2, 1992).

Financial Management: Problems Affecting BIA Trust Fund Financial Management (GAO/T-AFMD-92-12, July 2, 1992).

Financial Management: BIA Has Made Limited Progress in Reconciling Trust Accounts and Developing a Strategic Plan (GAO/AFMD-92-38, June 18, 1992).

Financial Management: BIA Has Made Limited Progress in Reconciling Indian Trust Fund Accounts and Developing a Strategic Plan (GAO/T-AFMD-92-6, April 2, 1992).

Indian Programs: Profile of Land Ownership at 12 Reservations (GAO/RCED-92-96BR, February 10, 1992).

BIA Reconciliation Monitoring (GAO/AFMD-92-36R, January 13, 1992).

Responses to Follow-up Questions Following the May 20, 1991 Oversight Hearing on BIA's Trust Fund Financial Management (B-243843.2, June 5, 1991).

Bureau of Indian Affairs' Efforts to Reconcile, Audit, and Manage the Indian Trust Funds (GAO/T-AFMD-91-6, May 20, 1991).

Bureau of Indian Affairs' Efforts to Reconcile and Audit the Indian Trust Funds (GAO/T-AFMD-91-2, April 11, 1991).

GAO

United States
General Accounting Office
Washington, D.C. 20548

Accounting and Information
Management Division

B-272352

June 24, 1996

The Honorable John McCain
Chairman, Committee on Indian Affairs
United States Senate

Dear Mr. Chairman:

Enclosed are responses to the questions that you provided subsequent to our testimony during your June 11, 1996, oversight hearing on "Indian Trust Funds Management by the Bureau of Indian Affairs and Implementation of the Indian Trust Fund Management Act of 1994."

I hope that this information is helpful. If you have further questions, or would like to discuss any of the issues in more detail, please contact me at (202) 512-9508 or Gayle Fischer, Assistant Director, at (202) 512-9577.

Sincerely yours,

Linda M. Calbom

Linda M. Calbom
Director, Civil Audits

Enclosure

RESPONSES TO QUESTIONS FROM JUNE 11, 1996, HEARING

Question 1: In GAO's review of the final reports that the Bureau of Indian Affairs (BIA) provided to each Indian tribe, have you found them to be accurate and reliable? Do they give a "fair and complete" accounting of tribal trust funds during the period 1972 to 1992?

GAO Response: We did not review the individual report packages sent to each of the tribes. We did review BIA's prototype report package. Based on this review, we identified a number of reconciliation procedures called for by the original contract that either were not performed or could not be completed as originally envisioned which could affect the reliability of the account statements. In addition, we found that the prototype report package did not explain or describe the numerous changes in reconciliation scope and methodologies or the extent to which the reconciliation provided a fair and complete accounting. These concerns were described in detail in our May 1996 report to your Committee.[1] Tribal representatives have told us that their report packages generally contain the same limited information that was contained in the prototype report package.

Question 2: What would be the next steps to take in order to implement the settlement process proposed by GAO to resolve damage claims arising from BIA's mismanagement of tribal trust funds?

GAO Response: The mediation/arbitration process that we proposed in our September 29, 1995 report[2] to your Committee and the House Committee on Resources requires a legislative basis. Our report included draft legislation that you might find useful in this regard. That draft would have amended the reconciliation reporting requirement of the American Indian Trust Fund Management Reform Act of 1994, section 304(3) of Public Law 103-412, to require that account holders and the Special Trustee for American Indians initiate certain actions in connection with the reconciliation reports. Those reports, as you know, were issued beginning in January 1996. The draft legislation would need to be revised to reflect that fact, as well as to accommodate specific concerns of Committee members. We would be happy to assist your staff in such an effort.

> Question 2 (A): Your May 3, 1996, GAO report said a similar settlement process could be used to resolve claims involving Individual Indian Money (IIM) accounts? Please describe how this might work, since we do not have even a partial reconciliation of these individual accounts?

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[1]Financial Management: BIA's Tribal Trust Fund Account Reconciliation Results (GAO/AIMD-96-63, May 3, 1996).

[2]Indian Trust Fund Settlement Legislation (GAO/AIMD/OGC-95-237R, September 29, 1995).

GAO Response: For reasons discussed in our response to Question 5 below, we do not advocate initiating a reconciliation process for IIM accounts. We do feel, however, that a mediation/arbitration process structured as we have proposed for tribal accounts could be used to resolve disputes between the government and IIM account holders over the correct balances of IIM accounts. The absence of a reconciliation and reconciliation reports for IIM accounts is not necessarily problematic. Although the settlement process we proposed for tribal accounts is designed to address disputes raised by account holders over balances as reported in the reconciliation reports, the proposal could easily be modified to recognize some other event to trigger the process for IIM account disputes. For example, as a starting point, the legislation might require the Office of Trust Funds Management (OTFM) to issue account statements by a certain date, reflecting balances shown in OTFM's records as of that date, and to offer the account holders an opportunity to dispute those balances through the same mediation/arbitration process we have proposed for tribal accounts.

Question 3: What are the most significant limitations in the scope and methodology of BIA's reconciliation effort?

GAO Response: In our May 1996, report, we describe a number of reconciliation procedures called for by the original contract that either were not performed or could not be completed as originally envisioned. The significance of these scope and methodology limitations to the reliability of tribes' account balances would vary depending upon the makeup of each tribe's financial transactions. For example, the contract called for a review of all leases with annual collections greater than $5,000, but due to time constraints, only 10.7 percent of those leases were tested. This scope limitation could greatly affect the reliability of the account balances for a tribe with significant lease revenues, but not affect the reliability for a tribe with no lease revenues. One major limitation that would affect the reliability of all tribes' account balances is that the general ledger was the starting point for the basic transactions reconciliation and the methodology provided no assurance that all transactions had been recorded in the general ledger.

Question 3 (A): I note from your statement that BIA did not disclose these limitations in the written materials BIA supplied to tribes. Has BIA adequately disclosed these limitations in its meetings with tribes?

GAO Response: In February 1996, we attended a 2-day meeting in Albuquerque, New Mexico, held for tribes by BIA and reconciliation contractor officials to discuss the reconciliation reports and results. At that meeting, BIA and contractor officials explained some scope limitations, especially in response to questions from

tribal representatives. We have not attended any of the subsequent regional meetings held by BIA to serve as workshops to assist individual tribes in reviewing their reconciliation results. InterTribal Monitoring Association (ITMA) representatives have told us that if tribes ask the right questions at the workshops, BIA explains or discloses limitations. However, they told us that all tribes may not understand the report packages well enough to ask the right questions. Also, ITMA told us that there is no way of knowing what BIA covers in the private meetings with tribal representatives, except to ask the tribes. Some tribal representatives told us that they are still reviewing their information and asking questions about the coverage of their accounts.

Question 4: What assurances were lost by not completing the independent certification by Coopers & Lybrand of the reconciliation results?

GAO Response: The fiscal year 1990 appropriations act required a separate, independent certification that the accounts had been reconciled and audited to the earliest possible date and that the results were the most complete reconciliation possible. The certification requirement was imposed to obtain independent assurance of the accuracy and reliability of the reconciled balances. After the certification contract was awarded in September 1993, BIA limited the scope of the certification contract to ensure only that the reconciliation effort was performed in accordance with the reconciliation contract. Therefore, the certification effort as designed did not address whether the reconciliation provided as complete an accounting as possible, and it would not, in our view, have provided the additional assurance originally contemplated.

Question 5: What would be required for the Department to properly audit, reconcile, and certify the Individual Indian Money (IIM) accounts?

GAO Response: Based on our work, we do not believe that records exist to support a full audit and reconciliation of the IIM accounts. Our May 3, 1996, report stated that due to missing records and the lack of an audit trail through BIA's Integrated Records Management System (IRMS), which is used to maintain IIM account information, tribal transactions could not be effectively isolated from individual Indian transactions. As a result, BIA was not able to complete tribal IIM and Special Deposit reconciliations. This same situation would impact BIA's ability to complete individual IIM account reconciliations. In addition, we reported in June 1992[3] that BIA's IRMS system operates differently at six locations, and that subtle changes to programs and coding schemes over time have made the information at these locations inconsistent. We further reported in

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[3] Financial Management: BIA Has Made Limited Progress in Reconciling Trust Accounts and Developing a Strategic Plan (GAO/AFMD-92-38, June 18, 1992).

our June 1992 report that questions exist about the accuracy of land and mineral ownership records upon which income distributions are based. A BIA official recently confirmed to us that those conditions continue to exist.

Question 5 (A): What records exist which might be used in court by either the United States or the Indian tribes in defending or in prosecuting claims for loss to the IIM accounts?

GAO Response: Because the IIM reconciliation was terminated, neither we nor BIA have developed a complete catalogue of what IIM records exist. As we noted in our testimony before your Committee, individual Indian trust fund accounts were not included in BIA's recent reconciliation project due to cost considerations and the potential for missing records. And, as noted above, significant questions have been raised about the quality and reliability of some of BIA's records. Individual account holders themselves may have records that they would use to assert their claims. Of course, any record offered in court to defend or prosecute a claim could be subject to challenge for relevance, accuracy, and reliability.

(913753)

InterTribal Monitoring Association for Indian Trust Funds
320 W. Willoughby Ave., Suite 300; Juneau, Alaska 99801
1.800.552.ITMA or Telefax 907.789.1630

June 28, 1996

Honorable John McCain, Senator
United States Senate
Committee on Indian Affairs
Washington, DC 20510-6450

RE: Response to Questions Concerning BIA Management of Indian Trust Funds

Dear Senator McCain,

Thank you for calling an oversight hearing of the committee to receive input on Indian trust funds management by the Bureau of Indian Affairs and implementation of the Indian Trust Fund Management Reform Act of 1994.

Below are responses to questions you posed to me in correspondence dated June 11, 1996. I greatly appreciate your interest in this matter, as do all Tribes and IIM trust fund account holders.

I. **Are you satisfied that the BIA and the Special Trustee are in compliance with the 1994 Reform Act? If not, what specific steps should both the BIA and the Special Trustee take to come into compliance?**

Some improvements have occurred during the past couple of years. Certainly, the appointment of Paul Homan as the Special Trustee offers expertise and thus potential for substantial improvement, not before present within the BIA. However, obstacles and challenges within the Department of Interior have, and I am convinced, will continue to stifle and delay meaningful improvements.

Specific steps to bring management systems of trust accounts, Tribal and IIM, into compliance with the 1994 Trust Fund Reform Act include:

A. The Special Trustee is not able to state that the reconciliation provides a full and fair accounting to the account holders.
B. The Special Trustee is not able to implement his draft strategic plan due to the lack of resources from the department and Congress. The Special Trustee has not even had the resources to fully develop his strategic plan.

2. How much annual funding do you think is needed to support technical assistance that enables Indian Tribes to move forward with plans to evaluate and administer their own trust funds? In your view, has the Special Trustee requested sufficient funds for this purpose for fiscal year 1997?

Technical assistance funds I referenced in my testimony relates to assisting Tribes in obtaining account information required before they can concur or object to their account balance and make informed decisions about directly administering their own funds. Our experience shows that Tribes have the professional capacity and access to records necessary to "fill-in the blanks" created by missing documents, and the 9 contract modifications and over 130 "issue papers" amending the Arthur Anderson and Company reconciliation contract with the BIA.

To accomplish this, $1,500,00 needs to be available to Tribes to research their records and attempt to come up with the answers that the BIA could not come up with. This funding level should support 20 to 30 Tribes annually. A year's experience using this approach will tell us how successful it is and adjustments can be made at that time. Please note that this request is about 1/20th of the amount spent by Arthur Anderson and Company, and further, that the condition of the records is the responsibility of the trustee not the beneficiaries who should not then suffer further losses in using Tribal funds to correct the trustee's errors.

Given this scenario, the Special Trustee has not requested sufficient funds to carry out this type of plan to get us closer to accurate account balances for the period from 1972 to 1992.

3. What specific steps would you recommend be taken to complete the reconciliation of Tribal trust funds?

Several things can occur which will bring us closer to closure and settlement of Tribal trust fund account balances. Specifically these are:

A. Provide Tribes with resources to research and report on the records they have on file - see response to #2. above.
B. Work with Tribes having small trust fund account balances and little activity during reconciliation period to obtain account balance acceptance and/or settlement which is fair and equitable to all parties.
C. Review all of the Arthur Anderson and Company reconciliation contract modifications (9) and "issue papers" (over 130) approved by the BIA to see if alternative methods could be used to yield more complete results.
D. Identify the Tribes having trust fund account balances prior to 1972 and then begin developing a strategy for settling on a "beginning balance" amount by Tribe for the reconciliation period.

E. Provide funding for Tribes to access their Arthur Andersen and Company work papers compiled during the reconciliation project. (Note: Arthur Andersen and Company assesses an hourly fee to Tribes when Tribes review their work papers in Albuquerque, NM.)

ITMA maintains the expertise and experience to assist the federal government in the accomplishment of many of these tasks.

4. On Individual Indian Money (IIM) accounts, what specific steps would you recommend be taken to examine and correct BIA mis-management of these accounts?

ITMA has examined this question in the past and in February 1995 published a briefing paper which best presents our views. I have attached a copy of the document for your benefit.

Thank you again for the opportunity to speak to this critical issue and I remain ready to respond to further questions or requests for assistance.

Best Regards,

Eric R. Davenport, Chairman

ATTACHMENT D

Intertribal Monitoring Association on Indian Trust Funds

3.02

Briefing Paper Prepared for the Department of the Interior regarding Examination of Individual Indian Money Accounts.

Albuquerque, New Mexico
February 9 & 10, 1995

INTRODUCTION:

In July, 1990, the Subcommittee on Interior and Related Agencies of the Committee on Appropriations of the U.S. House of Representatives consented to the Interior Department's entering into a formal procurement of a contractor to carry out a "reconciliation and audit" strategy, with the express condition that an "Indian/Tribal" group "work with the Bureau, beginning with development of the RFP, throughout this process of reconciliation and audit, and to assist in ensuring that sufficient consultation with affected tribes and individuals is accomplished during this process."

A contract, which originally contemplated only the reconciliation portion of this process, was executed on May 23, 1991, and authorized more than 31,000 hours of professional time in the first contract year for IIM account reconciliation activity at only three of the more than 80 agency locations with IIM activity.

In early January, 1992, the contractor reported that a complete reconciliation of IIM accounts was not possible at any one of the three agencies. A full scale reconciliation for even one fiscal year had not been possible at the one agency where that approach was tested.

Even if a complete reconciliation of IIM accounts were possible, the contractor reported, the cost for such an effort would be in excess of $108 million, and might reach as much as $281 million.

In light of the contractor's first year's scoping efforts of requirements for tribal accounts, IIM accounts, and systems reconciliation, the contract was subsequently modified significantly to import what had originally been conceived as the audit portion of the process into this contract, and to proceed apace with the review of tribal accounts. What to do with IIM accounts became the subject of subsequent strategic plans, task forces, work groups, tiger teams, bobcat teams, etc.

In the spring of 1993, we were invited to participate in meetings with the Department's IIM Work Group at which we were advised that the Bureau and the Department alone would determine the level of effort to be made regarding any reconciliation, audit, or review of IIM accounts, although Indians as "stakeholders in the process" would occasionally be permitted to participate in deliberations

In April of 1994, we became aware that the IIM Work Group had continued to meet throughout the previous year and had circulated a discussion paper regarding the use of statistical sampling to accomplish what had originally been contemplated as a reconciliation and audit of IIM accounts In May, 1994, we reminded the Department that any approach developed out of sight of Indian account holders was contrary to the directives of Congress and OMB, and unlikely to succeed. We were subsequently invited to discuss this statistical sampling approach with the IIM Work Group in November, 1994, and again in December, 1994. At the end of the December meeting, we were invited to present our views on IIM accounts.

ITMA View of latest Department Proposal for Statistical Sampling:

We note that the Department is of at least two minds on this proposal. The Team Leader advises us that the statistical sampling approach remains a concept put forth for discussion. The Project Leader advises us that no fewer than three meetings of the Work Group have concluded that this is the only approach available.

Whatever the status of this proposal within the Department, it is emphatically not acceptable to account holders for the following reasons. It is our understanding, corroborated by statisticians from the General Accounting Office, that the purpose of statistical sampling is to determine the degree of confidence with which a statement may be made about a known population. Until the statement which is to be made is set forth with clarity, the statistician cannot design his sample; cannot determine the size of his sample; cannot determine the variable(s) to be tested; and cannot state the degree of confidence with which the desired statement could be made. In this instance, not we, the Department, nor the contractor has been able to construct any statement that could be made based upon a statistical sampling of accounts that would provide any confidence to an account holder regarding the balance in his or her account. Accordingly, we conclude that the initial appeal of a global, statistical sampling approach to IIM accounts was a chimera.

In fairness, we note that the contractor has made it clear that no such statement regarding account balances could be made following such a statistical sampling. The contractor has suggested, however, that a meaningful statement might well be made regarding the range of error in posting to appropriate accounts the recorded receipt and disbursement activity for some specified period of time, probably a five- to six-year period. The Department has indicated that its experience in the tribal account reconciliation activity may well lead it to conclude that this would be a meaningful and salutary objective to achieve through this statistical sampling approach.

Even if such a purpose, meaningless to account holders but useful to the Department, were determined to be worth the cost and effort, we suggest that this approach would not achieve that purpose. A statistical sampling approach in this arena could only be valid, in our view, when applied to a known universe involving consistently applied accounting procedures; when applied to a set of books that have been prepared under generally accepted accounting principles, including internal controls, adequate segregation of duties, and consistent record management. None of these applies to historic IIM account administration. In addition, the contractor's managing partner advised us on August 12, 1992, that the underlying ownership records are so outdated as to have caused errors in calculating IIM distributions.

Our view is that even such a limited success would serve no honorable or useful purpose at all from the perspective of account holders. Further, we are gravely concerned that the potential for less than honorable or useful purposes to be served by such an approach greatly outweighs any countervailing considerations. We note that the Department is getting much mileage out of its ability

to report to the Congress and Indian tribes the "favorable results" achieved by reconciling receipt and disbursement activities on tribal accounts. We believe that these reports standing alone, as they often do, are actually misleading with respect to the proportion of account activity actually "reconciled," and that the reduced level of effort contemplated for tribes other than the original five pilot tribes will result in reports that are even more misleading for the remaining tribes.

We note here that as early as July, 1992, we advised the Department that this matching of recorded debits and credits on the Bureau's books "is the single aspect of IIM administration that historically is least likely to contain material errors and omissions." The purpose of the entire exercise, in our view, is not to report how well the Bureau may have done the simplest part of its job over some period of time that itself is selected on the basis of ease of review, *i.e.*, the availability of automated data, but rather was to address problem areas, both those that were known and those that might turn up in an examination of the books.

Here again, we are guided somewhat by the Department's cheerful report to us on June 13, 1994, regarding the tribal account reconciliation project that more than one-half the available budget for the entire project has been spent on that part of the activity in which the number and magnitude of error was expected to be minimal, and in which the least information regarding the accuracy of account balances was to be gleaned.

Finally, we pointed out in our November and December 1994 meetings that the statistical sampling approach under discussion could not reasonably be expected to turn up several instances of known errors in IIM administration, errors that amounted to millions of dollars over a period of time that includes both the period suggested for sampling, and other years as well.

The Department's response at that time was that nothing proposed was intended to prevent any individual from bringing to the Department's attention errors in his or her account. We were further invited to present these known instances of errors or failures in IIM administration.

For the above reasons, ITMA emphatically recommends against an expensive, time-consuming, and meaningless exercise in statistical sampling of receipt and disbursement activity in IIM accounts, and offers for consideration the following approach, instead.

ITMA SUGGESTIONS FOR IIM ACCOUNT REVIEW

1 IIM Reconciliation not Possible

Our initial suggestion is that the term "reconciliation" be dropped from all discussions of IIM account reviews. The contractor has made it clear since January, 1992; the Department conceded in November, 1994, and again in December, 1994, General Accounting Office staff concurred in December, 1994, that a "reconciliation" of these

hundreds of thousands of accounts is not possible. Since January, 1992, all parties have agreed that, were such a thing possible, the beginning price tag of $108 million is prohibitively expensive.

2. Two Objectives sought in IIM Account Review

The objectives to be sought in review of IIM accounts are these:

To provide voluntarily as honest an accounting as is possible to the IIM account holders regarding the balances and historic activity of their accounts; and

To provide wherever possible to the Bureau of Indian Affairs a stated or audited opening balance for IIM accounts administered by that agency.

3. Achieve Finality of Review Immediately Where Possible by Auditing the IIM Judgment Award Accounts

As of May 31, 1992, more than 50% of all money in IIM accounts was to be found in only 24% of all the accounts. These accounts represent funds that have been retained in the IIM system and not withdrawn, distributed, or reclassified since the original judgment award date. Accordingly, virtually no disbursement activity should be found in these accounts.

The reasoning advanced by the contractor in 1992 for expanding his engagement to include account review in lieu of an audit of the reconciled accounts, namely, that no opening balance would be available to the auditor, should have no application to these accounts for which correct opening balances should readily determinable. The only income postings to these accounts, subsequent to their establishment, should be periodic interest distributions or subsequent judgment award principal postings.

The reconciliation contractor reported as early as April, 1994, that it should be possible to obtain assurance that balances held in the IIM system as of September 30, 1993, are properly stated and are posted to the appropriate individuals' accounts, or to propose adjustments to achieve that result.

It must be pointed out that an audit of judgment award accounts presently in the system will provide no assurances regarding judgment awards that have already been paid out to individuals. This fact will raise issues regarding

judgments that have been only partially disbursed.

An audit that begins with the judgment awards, however, as opposed to beginning with receipt postings, should provide assurance regarding all judgment award distributions to individuals, including those that have already been disbursed and are no longer in the system.

An audit approach that begins with judgment award, rather than with receipt postings to the accounts, has the added advantage of verifying, rather than justifying, the account balances. In other words, the variable that we are testing for should not serve as the starting point for our examination.

Finally, an audit of these funds would have the great benefit of providing the Bureau with clean account balances at a point certain in time, from which daily reconciliations can be maintained for each of these nearly 70,000 accounts. This approach for this category of IIM accounts would provide the Bureau with a one-time and final resolution of its difficulties regarding one-half of the assets in its most troublesome portfolio, the IIM pool.

Finally, we recommend that the firm(s) selected to perform this audit work must be independent of the present reconciliation contractor, who has reconstructed at least some of the books to be audited. This is consistent with the common understanding in 1991 that the reconciliation contractor's work would be reviewed by an independent auditor prior to certification.

4. <u>Test methods of Grouping Remaining IIM Accounts into Manageable Sizes for Account Review</u>

This effort reflects a corollary of the principal underlying the suggestion of auditing the judgment accounts, namely, that a systems-driven, global approach is not likely to be successful in any attempt to provide account holders with an honest effort to achieve an accounting, not only of what has been collected, but of what should have been collected.

It seems clear to ITMA that an effective review of the remaining IIM accounts should be tailored to the nature of the account. If farm and pasture leases can be reviewed against a sum certain periodic payment by the terms of the leases, then they should be reviewed separately and early in order to determine the appropriateness of account holdings from that source.

On the other hand, oil and gas leases which by their own terms often require multiple accounting exercises in order to determine the appropriate royalty payment for even a single production month clearly cannot be meaningfully reviewed in the same

manner as one would review the posting of sum-certain receipts.

This review should also consider the prospect that, just as a single, global approach is not likely to be meaningful to account holders, it may be that geographic stratification for review purposes could be useful as well. For instance, a review of oil and gas leases in the San Juan Basin of the Four Corners Area will certainly involve dealing with the complexities of a natural gas industry and market that have undergone radical changes in recent years, changes which have affected the payments to Indian mineral owners by significant orders of magnitude. There may be no reason to lump review of accounts containing monies from these leases with the far less onerous and complex review of royalty payments arising from leases which produce only oil in other producing provinces.

These examples are by no means exhaustive. Timber, in fact, has brought in more revenues than oil and gas. And there are at least a half-dozen other solid minerals that are valued quite differently than fluid minerals for royalty payment purposes. In short, this step involves the application of informed and creative thinking to reduce to manageable proportions what at first blush has too often appeared to be such a huge monolith that only the world's biggest firms and computers could comprehend it, much less address it.

5. <u>Complete the Systems Reconciliation and Certification Begun by Present Contractors</u>

The reconciliation contractor's present engagement contemplates reconciliation of the IRMS system to the Finance system, and the Finance System to the U.S. Treasury. ITMA suggests that this systems reconciliation be assigned a high priority and that these systems reconciliations be completed as quickly as possible. Any difficulties in effecting these systems reconciliations should be reported to the Bureau and ITMA immediately.

6. <u>Focus Account Review on Known Problem Areas</u>

ITMA has long taken the view that any examination of IIM accounts which, by its very design, is unlikely to afford relief and compensation to account holders whose accounts are known to have been pilfered; whose accounts are known to have gone unpaid while producing leases of their lands have made others wealthy; whose payments have been disbursed to other individuals; whose interest has remained undisbursed in suspense accounts for years, etc., will not result in an honest effort to make account holders whole. The Department has admonished ITMA not to resort to vague concerns and enjoined us to provide written identification of such instances as are known. ITMA does not have access to all the records from the cases cited

below, but submits this partial list of instances known to have occurred:

Austin Walker, a Creek Indian, was deprived of royalties and interest during the 1980's when his land produced more than $1 million of oil and gas, and payments were disbursed to another individual. Bureau and Department employees defrauded him into signing a release of his claims.

Press Primeaux, a Ponca Indian, was unable to obtain relief from the Bureau or the Department in the 1980's when oil and gas were drained from his land.

An inspector general audit in the 1980's discovered seven such drainage cases, some of which were estimated to be worth more than $1 million to Indian mineral owners, cases which were not pursued by agency officials because they did not know "how to pursue this type of case."

In the 1980's, the inspector general identified more than $634,000 in "inappropriate" transactions in an IIM account maintained in Anadarko in the name of R.L. Larson, believed to be a fictitious name maintained by Bureau employees to disburse monies belonging to other Indians.

Interest in excess of $200,000 and belonging to owners of Navajo allotments has not been disbursed for years, leaving the Bureau uncertain as to the identity of the present owners of this money.

Owners of Navajo allotments in the Gallegos Canyon Area of Northwestern New Mexico have not been paid royalties, rentals, or interest on production from their prolifically producing lands for a period of five years, from the late 1980's to the mid-1990's.

Luther Numaso, a Kickapoo Indian, was deprived of more than $1 million in royalties and interest from the late 1980's into the early 1990's because of fraudulent production reporting.

In the 1980's, Frances Begay, a Navajo, and her brothers and sisters lost their vehicles and livestock when they could not get royalty payments from oil and gas wells producing on their lands. They could not determine when production ultimately did cease, until a new operator could be found to replace the one who absconded.

Roger Bosin, a Kiowa-Comanche, lost his home in the 1980's when production continued on his land, but oil and gas royalties stopped.

Beatrice Saupitty, a Comanche, disputed an unverified report by the Department that she had been overpaid $80,000 which would be unilaterally

recouped from future production from her land. A privately retained auditor concluded that she had been underpaid $64,000.

In the 1980's, the IIM account of Nora Stuart, an Osage, was pilfered by the Administrative Officer for the Osage Agency in Oklahoma.

In the 1980's, the account of an unidentified Agua Caliente woman from Palm Springs was pilfered by a Bureau employee.

Individual Indians continue to lose livestock, vehicles and credit because the Bureau fails to comply with its own regulations regarding the timely probate of estates.

The Bureau unilaterally and arbitrarily assigned to the IIM pool more than $2 million in losses from investment in a bogus credit union in 1984, explaining that this decision was made for "administrative expediency." See, DEPOSITION OF JOHN W. VALE, June 3-5, 1985, at 210. U. S. v. Mark Twain Bank - Kansas City, (D.C., W.D., MO.), Civ No. 84-0380-CV-W-9.

ITMA believes that the practice described in the Mark Twain litigation was a common practice throughout the 1970's and 1980's when the Bureau often had monies invested in institutions that failed. If the Bureau were not made entirely whole by insurance, the losses were arbitrarily allocated to the IIM pool, where it was thought they would never be noticed. In fact, to this date, the government has never advised Indian country or any account holder of the Mark Twain case. A tribal accountant and ITMA board member discovered it while reading a history of the savings and loan industry's metamorphoses in the 1980's. Even then, the Department would not share any documents regarding this case, and ITMA reviewed the files at the courthouse in Kansas City.

In 1985, the inspector general reported delays in deposits of monies received for IIM accounts at the Concho Agency.

In 1985, the inspector general reported delays in deposits of monies received for IIM accounts at the Pawnee Agency.

In 1984, the inspector general reported that collections and interest earnings for IIM accounts were not posted in a timely manner in the Phoenix Area.

In 1985, the inspector general reported that the Anadarko, Pine Ridge, Concho, Osage, and Pawnee Agencies were making postings to estate accounts after the accounts had been closed, and were making significant

errors in computing interest payable to IIM account holders.

7. Continue Improvements in Future IIM Administration

ITMA continues to urge continuous upgrading and improving of the administration of IIM accounts by the Bureau and the Department. A few of the issues that we believe warrant immediate attention and priority include:

- Current reconciliation of IRMS to Finance;
- Maintain current reconciliation of inter-agency transfers to Treasury for IIM accounts (SF-1081 transfers, e.g., MMS collections);
- Maintain current reconciliation of Area/Agency asset and liability accounts with IRMS
- Daily cash sweeps
- Identification of all minors' accounts earning over $1200/yr in interest (requiring them to pay income tax at parents' rates or suffer penalties that exceed account balances in a few years);
- Determination of need for W-9 filings, and compliance with requirements;
- Determination of agency compliance with Interest and Dividend Tax Compliance Act of 1983 (requiring backup withholding);
- Determination of Form 1099-INT filing requirements for IIM account holders;
- Determine tax filing requirements for nonIndian IIM account holders;
- Make policy decision on matters such as contractibility of IIM administration, willingness of BIA to respect tribal court orders (do birth or custodial parents have right to access minors' funds for school clothes? Do courts or superintendents decide?, etc.)

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